

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-4162

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FEDERAL BULK CARRIERS, INC.,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

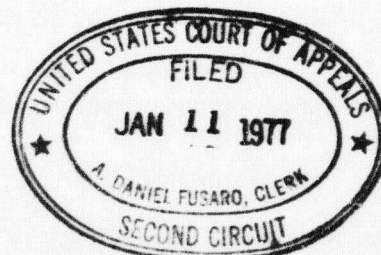
Respondent-Appellee.

APPEAL FROM THE DECISION OF THE UNITED STATES TAX COURT

APPENDIX

Robert J. McDonald  
William F. Indoe  
Attorneys for Petitioner-Appellant  
48 Wall Street  
New York, New York 10005  
(212) 952-8100

Sullivan & Cromwell,  
Of Counsel



PAGINATION AS IN ORIGINAL COPY



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with reservation to introduce any such Exhibit.

# UNITED STATES TAX COURT

## GENERAL DOCKET

0000001

DOCKET NO. 6115-73

FEDERAL BULK CARRIERS, INC.

60 East 42nd Street

New York, New York 10017

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

Robert J. McDonald; William F. Indoe;  
(Sullivan & Cromwell) 48 Wall Street,  
New York, N. Y. 10005

ADDRESS Sydney Elliott Unger (same add. as above)  
(E/A 10/29/75)

Date		Filings and Proceedings	Action	Served
Month	Day Year			
Aug. 10,	1973	PETITION FILED: FEE PAID	Aug. 10, 1973	Aug. 10, 1973
Aug. 10,	1973	REQUEST by petr. for trial at New York, N.Y.	GRANTED Aug. 10, 1973	Aug. 10, 1973
Oct. 5,	1973	ANSWER by Resp. filed.		Oct. 9, 1973
Nov. 14,	1974	NOTICE OF TRIAL on February 18, 1975 at New York, N.Y.		Nov. 14, 1974
Feb. 18,	1975	HEARING at New York, N.Y. before Judge Drennen		
		Petr.'s motion for continuance filed - GRANTED - (see		
		order) (calendared for report New York on May 12, 1975).		
Feb. 18,	1975	ORDER, that petr.'s motion is granted in that this case		MAR 4 1975
		is continued generally for trial in due course; and		
		ORDERED, that this case is calendared for report at		
		New York, N.Y. on May 12, 1975.		
May 12,	1975	HEARING at New York, N. Y. before Judge Fay.		
		Report made.		
May 30,	1975	TRANSCRIPT of May 12, 1975 received.		
June 18,	1975	ORDERED, that this case is calendared for trial on		JUN 19 1975
		Oct. 28, 1975 at New York, N.Y.		
Oct. 28,29,	1975	TRIAL at New York, N.Y. before Judge Raum.		
		Stipulation of facts with attached exhibits filed 10/29/75.		
		Entry of Appearance by Sydney Elliot Unger filed 10/29/75.		NOV 6 1975

(Continued on page 2)





## UNITED STATES TAX COURT

----- x  
FEDERAL BULK CARRIERS, INC., :  
Petitioner, :  
v. : Docket No.  
COMMISSIONER OF INTERNAL REVENUE, :  
Respondent. :  
----- x

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, bearing the symbols AP:NY:RWR:SRO, dated May 21, 1973, and as the basis for its case alleges as follows:

1. Petitioner is a corporation incorporated under the laws of New York having its principal place of business at 60 East 42nd Street, New York, New York 10017. The returns for the taxable years involved were filed with the District Director of Internal Revenue of the District of Manhattan, New York.
2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to petitioner on or about May 21, 1973.



3. The deficiency as determined by respondent is in income tax for the taxable years ended December 31, 1962 ("1962"), December 31, 1964 ("1964"), December 31, 1965 ("1965"), December 31, 1966 ("1966"), December 31, 1967 ("1967") and December 31, 1968 ("1968") in the amounts, respectively, of \$992.41, \$1041.56, \$3293.66, \$31,030.19, \$15,016.00 and \$53,288.65.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) Respondent erroneously determined that a "loss by indemnification" deduction claimed by petitioner in the amount of \$400,776.93 for 1965 did not constitute an ordinary loss deduction, and accordingly respondent erroneously increased petitioner's taxable income for 1965 by \$400,776.93.

(b) Respondent erroneously determined that a "loss by indemnification" deduction claimed by petitioner in the amount of \$22,240.49 for 1966 did not constitute an ordinary loss deduction, and accordingly respondent erroneously increased petitioner's taxable income for 1966 by \$22,240.49.

(c) Respondent erroneously determined that petitioner did not have a net operating loss of \$385,805.77 for 1965.

(d) Respondent erroneously disallowed the carryback of \$3,308.03, \$7,587.18 and \$18,128.02 of petitioner's 1965 net operating loss to 1962, 1963 and 1964, respectively, and



accordingly, respondent erroneously disallowed net operating loss deductions claimed by petitioner of \$3,308.03, \$7,587.18 and \$18,128.02 for the years 1962, 1963 and 1964, respectively.

(e) Respondent erroneously disallowed the carryover of the unused portion of petitioner's 1965 net operating loss to 1966, 1967 and 1968, respectively.

(f) Respondent erroneously disallowed net operating loss deductions of \$356,382.54, \$337,491.25 and \$292,666.24 claimed by petitioner for 1966, 1967 and 1968.

(g) Respondent erroneously increased petitioner's taxable income for the years 1966, 1967 and 1968 by \$356,382.54, \$337,491.25 and \$292,666.24, respectively (in addition to the erroneous increase described in paragraph 4(b) of this petition).

(h) Respondent erroneously determined that petitioner qualified as a personal holding company under Section 542 of the Internal Revenue Code of 1954, as amended (the "Code") in the year 1966.

(i) Respondent erroneously determined that petitioner is subject to the personal holding company tax under Section 541 of the Code for the year 1966.

5. The facts upon which petitioner relies as the basis of its case are as follows:

(a) During most of the taxable years in issue, petitioner was engaged in the business of chartering, supervising, managing and acting as agent for ocean-going vessels.

(b) Petitioner filed its Federal income tax returns on an accrual basis. Its taxable year is the calendar year.

(c) In 1957 petitioner acquired 60% of the outstanding stock of Federal Tankers Limited ("Tankers", a Canadian corporation) for U.S. \$18,837 and by September 24, 1959 acquired 60% of Tankers' subordinated notes for U.S. \$1,299,070. The other 40% interest in Tankers' stock and notes was acquired by Bessemer Securities Corporation ("Bessemer").

(d) The sole business activity of Tankers was the building, ownership and chartering of a 41,246 dwt. tanker, eventually named the S.T. Federal Monarch (the "Monarch"). The Monarch was built under the Canadian Vessel Construction Assistance Act ("CVCA Act"), and pursuant thereto the owner of the Monarch was entitled to certain excess depreciation deductions for Canadian income tax purposes.

(e) Tankers organized Federal Petroleum Carriers Limited ("Carriers", a Canadian corporation) as a wholly-owned subsidiary to contract for the building of the Monarch.

(f) The Monarch was launched on June 19, 1959 and was delivered by the builders on September 24, 1959.



(g) Upon delivery, the Monarch was bareboat chartered by Carriers to Imperial Oil Limited ("Imperial", a Canadian corporation), until September 24, 1974. Imperial simultaneously bareboat chartered the Monarch to Tankers for the same period. Tankers simultaneously time chartered the Monarch to Imperial until September 24, 1974.

(h) The final cost of the Monarch was Can. \$11,236,083. Of this amount, U.S. \$8,000,000 was loaned to Carriers by a group of unrelated institutional lenders (the "Lenders"), and such loan was secured by a ship mortgage on the Monarch (the "Ship Mortgage Loan"). The Ship Mortgage Loan bore interest at the rate of 5% with respect to \$1,260,000 of the principal amount thereof which was due October 1, 1965; 4 1/4% with respect to \$840,000 of the principal amount thereof which was due October 1, 1969; and 4 1/4% with respect to \$5,900,000 of the principal thereof amount which was due October 1, 1974.

(i) Pursuant to the terms of the Ship Mortgage Loan, the trustee for the Lenders became the assignee of the charter payments to be made by Imperial.

(j) Pursuant to the terms of indenture and related loan agreements entered into in connection with the Ship Mortgage Loan, petitioner along with Bessemer was required to maintain working capital of \$150,000 in Carriers and \$150,000 in Tankers,

and petitioner and Bessemer were required to guarantee the Monarch's performance under its charters to Imperial.

(k) After being placed in operation, the Monarch experienced a series of mechanical, labor and other service problems.

(l) In order to avoid contributing additional working capital to Tankers and Carriers under the terms of the Ship Mortgage Loan if the expenses of owning and operating the Monarch exceeded charter income, petitioner and Bessemer sold their stock and notes in Tankers as of July 31, 1961 to Maple Leaf Mills ("Maple", a Canadian corporation) for Can. \$2,325,000.

(m) Pursuant to the terms of the sale, Maple replaced Carriers as a party to the first bareboat charter with Imperial, and became the primary obligor on the Ship Mortgage Loan. Petitioner and Bessemer remained guarantors of the Ship Mortgage Loan.

(n) Simultaneously with the sale of their interest in Tankers, petitioner and Bessemer formed Bessbulk Limited ("Bessbulk", a Canadian corporation) with an initial capital of Can. \$1,943,100, of which petitioner contributed Can. \$1,166,060 consisting of Can. \$60 stock and the balance Bessbulk debentures.

(o) Petitioner and Bessemer caused Bessbulk to agree to pay Maple its annual income to the extent available and necessary to indemnify Maple in the event the Monarch's actual



earnings fell short of stated earnings.

(p) Maple agreed that at the expiration of the charter to Imperial, or upon the earlier sale of the Monarch, Bessbulk would receive 35% of Monarch's actual earnings over stated earnings.

(q) Actual loss from operations of the Monarch in excess of Bessbulk's net income was to be paid to Maple out of the net assets of Bessbulk upon expiration of the charter to Imperial, or upon the earlier sale of the Monarch by Maple Leaf.

(r) The substance of the arrangement between the parties was that Bessbulk was formed and used as a "cash drawer" account to which petitioner initially deposited Can. \$1,166,060. Petitioner's share of such account was increased by its proportionate part of the net income and gain realized on the assets held in the account, and by 21% (i.e., 60% of 35%) of the actual profits of the Monarch. Conversely, petitioner's share of the income and assets of the account was reduced by losses realized on the assets held in the account, and by 60% of the operating losses of the Monarch.

(s) At all times, petitioner was directly at risk on the operations of the Monarch. Petitioner suffered a direct economic loss if the Monarch operated at a loss, and benefited from a direct economic profit if the Monarch operated at a profit.

(t) As of June 20, 1963, petitioner and Bessemer sold their shares and debentures in Bessbulk to Maple for a price to

be determined at the earlier of the expiration of the charters to Imperial or sale of the Monarch by Maple, based upon the then net worth of Bessbulk less the amount of the cumulative losses of the Monarch in excess of annual distributions, if any, to Maple out of Bessbulk's net earnings.

(u) The sale of Bessbulk to Maple did not alter the substance of the arrangements between petitioner and Maple described in paragraphs 5(o) through (s) of this petition, except that petitioner became entitled to 60% of the earnings of the Monarch in excess of stated earnings instead of 21%.

(v) Petitioner supervised the managers of the Monarch from the time it entered service in 1959. It was eventually realized that a change of managers in 1962 had still not resulted in any effective profit improvement and that the crew manning as well as mechanical problems leading to high maintenance and repair charges continued to cause losses. Therefore in early 1964, petitioner agreed with Maple and Bessemer that it would become managers of the Monarch directly, and petitioner remained managers of the Monarch until it was sold by Maple to an unrelated party on November 19, 1965.

(w) In order to induce the sale of the Monarch, Maple required petitioner and Bessemer to undertake further guarantees



in the form of contributing to a deposit (the "Deposit") under Section 4(1)(a)(ii) of the CVCA Act in order that Maple would be able to obtain an appropriate certificate from the Canadian Maritime Commission, which, when presented to the Canadian Income Tax Department, would not cause recapture under the predecessor of Section 13(13) of the present Canadian Income Tax Act of excess depreciation claimed on the Monarch by Maple.

(x) Petitioner was at risk of loss on the Deposit.

(y) At the time of the sale of the Monarch by Maple, it was estimated that petitioner's 60% share of the operating losses of the Monarch over the net income of Bessbulk from July 31, 1961 was \$501,684.52. Petitioner's share of the net capital gain realized upon the liquidation of a part of the assets held in Bessbulk, which assets were held for more than 6 months, was \$100,907.59. On the basis of these computations, Maple paid petitioner Can. \$768,558 for petitioner's shares and debentures in Bessbulk, a sum U.S. \$400,776.93 less than the value of petitioner's share of Bessbulk when it was formed.

(z) The U.S. \$501,684.52 paid and accrued by petitioner to Maple in the taxable year 1965 was paid to cover petitioner's rights, obligations and risks with respect to operation of the Monarch from July 31, 1961 until its sale on November 19, 1965.

This payment was an indemnity payment for Federal income tax purposes.

(aa) In the alternative, petitioner, Bessemer and Maple operated the Monarch in a manner in which they shared the risk of loss from such operation and the benefits of profits therefrom as a joint venture from July 31, 1961 until its sale on November 19, 1965, and the U.S. \$501,684.52 paid and accrued by petitioner to Maple in the taxable year 1965 represented its share of the Monarch's operating expenses over the sum of its charter income and net annual income of Bessbulk.

(bb) The \$501,684.52 paid and accrued by petitioner to Maple in the taxable year 1965 was deductible as an ordinary loss for Federal income tax purposes under Section 165 of the Code, or deductible as a business expense under Section 162 of the Code, or otherwise deductible as its distributive share of the loss of a partnership of which it was a partner under Section 702(a) of the Code..

(cc) Petitioner's share, amounting to U.S. \$100,907.59, of the gain realized upon the sale in 1965 of a part of the assets held in the name of Bessbulk was taxable to petitioner as a long-term capital gain under Section 1201 of the Code.

(dd) On its Federal income tax return for 1965, petitioner erroneously netted the \$501,684.52 amount paid Maple against the \$100,907.59 capital gain realized on the sale of Bessbulk assets



and reported an ordinary loss of only U.S. \$400,776.93, whereas it should have reported an ordinary loss of U.S. \$501,684.52 and a long-term capital gain of U.S. \$100,907.59.

(ee) After a final accounting was prepared in 1966, petitioner's share of the operating losses of the Monarch for each period of its operation since July 31, 1961 in excess of annual net income of Bessbulk was determined to be:

<u>Period Ended</u>	<u>Loss</u>
July 31, 1962	U.S. \$ 95,393.53
July 31, 1963	170,988.00
July 31, 1964	137,569.93
July 31, 1965	36,713.72
November 19, 1965	<u>109,031.15</u>
TOTAL	U.S. \$549,696.33

(ff) During 1966, in compliance with the CVCA Act, the Deposit was sold in a manner that enabled Maple to obtain the requisite certificate from the Canadian Maritime Commission. As a result of the sale of the Deposit, petitioner realized a net gain of \$25,771 over the amount it had contributed to the Deposit.

(gg) In the taxable year 1966, petitioner paid Maple U.S. \$48,011.81, the difference between its actual and estimated share of the operating losses of the Monarch in excess of the annual net income of Bessbulk.

(hh) The U.S. \$48,011.81 paid and accrued by petitioner to Maple in the taxable year 1966 was paid to cover petitioner's rights, obligations and risks with respect to operations of the Monarch from July 31, 1961 until its sale on November 19, 1965. This payment was an indemnity payment for Federal income tax purposes.

(ii) In the alternative, petitioner, Bessemer and Maple operated the Monarch in a manner in which they shared the risk of loss from such operations and the benefits of profits therefrom as a joint venture from July 31, 1961 until its sale on November 19, 1965, and the U.S. \$48,011.81 paid accrued by petitioner to Maple in the taxable year 1966 represented its additional share of the Monarch's operating expenses over the sum of its charter income and net annual income of Bessbulk.

(jj) The U.S. \$25,771 realized by petitioner on the sale of the Deposit was, for Federal income tax purposes, an offset to the U.S. \$48,011.81 paid by petitioner to Maple, since both amounts were in respect of indemnities or joint venture operations made by petitioner with Maple.

(kk) The net U.S. \$22,240.49 paid and accrued by petitioner to Maple in the taxable year 1966 was deductible as an ordinary loss for Federal income tax purposes under Section 165 of the Code, or deductible as a business expense under Section 162 of the Code, or otherwise deductible as its distributive share of the loss of a partnership of which it was a partner under Section 702(a) of the Code.



(11) In the case Maple Leaf Mills Ltd. v. Minister, 72 Dom. Tax Cas. 6166 (1972), the Federal Court of Canada specifically decided that the amounts described in paragraphs 5(z) and 5(gg) hereof paid by petitioner to Maple were payments arising out of operations of the Monarch, and were not post-sale adjustments in the sale price of any property sold by petitioner and Bessemer to Maple.

WHEREFORE, petitioner prays that this Court may try this case, and determine that there is no deficiency in the income tax of petitioner for the taxable years ended December 31, 1962, 1964, 1965, 1966, 1967 and 1968, and determine that petitioner was not a personal holding company for the taxable year ended December 31, 1966, and grant such other and further relief as the Court may deem proper.

ROBERT J. McDONALD

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Robert J. McDonald

WILLIAM F. INDOE

---

William F. Indoe

Attorneys for Petitioner,  
48 Wall Street,  
New York, N.Y. 10005  
(212) HA2-8100

SULLIVAN & CROMWELL

Of Counsel

P.O. Box 2954, Church St. Sta., New York, N.Y. 10008

## Department of the Treasury

Regional Commissioner  
Internal Revenue Service  
North-Atlantic Region

Exhibit A



Date:

MAY 21 1973

In reply refer to:

AP:NY:RWR:GRO

▷ Federal Bulk Carriers, Inc.  
60 East 42nd Street  
New York, New York 10017

Gentlemen:

<u>Taxable Year Ended</u>	<u>Deficiency</u>	<u>Taxable Year Ended</u>	<u>Deficiency</u>
December 31, 1962	\$ 992.41	December 31, 1966	\$31,030.19
December 31, 1964	1,041.56	December 31, 1967	15,016.00
December 31, 1965	3,293.66	December 31, 1968	53,288.65

This letter is a **NOTICE OF DEFICIENCY**—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,  
Raymond F. Harless  
Acting Commissioner  
By

(Signed) Robert W. Reamer

Enclosures:  
Statement  
Waiver, Form 870  
Envelope

Conferee-Special Assistant  
Appellate Branch Office

BEST COPY AVAILABLE



600501

FORM 4089  
(REV. MAY 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

STATUTORY NOTICE STATEMENT

SYMBOLS

AP:NY:RWR:JRo

Federal Bulk Carriers, Inc.  
60 East 42nd Street  
New York, New York 10017

KIND OF TAX

INCOME

TAX YEAR ENDED	DEFICIENCY
December 31, 1962	\$ 992.41
December 31, 1964	1,041.56
December 31, 1965	3,293.66
December 31, 1966	31,030.19
December 31, 1967	15,016.00
December 31, 1968	<u>53,288.65</u>
Total	<u>\$104,662.47</u>

It is determined that you qualified as a personal holding company as defined by Section 542 of the Internal Revenue Code in the taxable year ended December 31, 1966. Therefore, you are subject to the personal holding company tax imposed by Section 541 of the Internal Revenue Code.

☒ Copy to Authorized Representative:

Mr. Robert J. McDonald  
Sullivan and Cromwell  
48 Wall Street  
New York, N.Y. 10005

FORM 3613 (REV. JULY 1960)		DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE CORPORATION INCOME TAX		STATEMENT SCHEDULE	
NAME		TAXABLE YEARS ENDED			
		Dec. 31, 1962		Dec. 31, 1963	
Federal Bulk Carriers, Inc.					
TAXABLE INCOME AS SHOWN IN:					
<input checked="" type="checkbox"/> RETURN AS FILED					
<input type="checkbox"/> PRELIMINARY LETTER DATED					
<input type="checkbox"/> STATUTORY NOTICE DATED					
INCREASES (DECREASES) IN INCOME (See attached explanation of items)					
TAXABLE INCOME AS REVISED			\$3,308.03		\$ 7,587.18
A. LESS: EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS (Alternative tax computation)					
B. INCOME SUBJECT TO TAX			\$3,308.03		\$ 7,587.18
C. PARTIAL TAX FOR INCOME ON LINE B			\$ 992.41		\$ 2,276.15
D. 25% OF AMOUNT SHOWN ON LINE A (Alternative tax computation)					
E. TAX SURCHARGE					
F. OTHER TAXES					
G. SUBTOTAL (Lines C, D, E and F)			\$ 992.41		\$ 2,276.15
H. TAX CREDITS Investment Credit (See page 6)					\$ 2,276.15
I. INCOME TAX LIABILITY (Line G less Line H)			\$ 992.41		None
J. INCOME TAX LIABILITY SHOWN ON RETURN AND ADDITIONAL ASSESSMENT (OVERASSESSMENT) Tentative carryback allowance dated October 28, 1966 Schedule No. 66 CB 321-13			992.41 ( 992.41)		2,276.15 (2,276.15)
K. DEFICIENCY (OVERASSESSMENT)			\$ 992.41		None

TAX COMPUTATION



00000.9

FORM 3613 (REV. JULY 1965)		DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE CORPORATION INCOME TAX		STATEMENT SCHEDULE	
NAME		TAXABLE YEARS ENDED			
Federal Bulk Carriers, Inc.			Dec. 31, 1964	Dec. 31, 1965	
TAXABLE INCOME AS SHOWN IN:					
<input checked="" type="checkbox"/> RETURN AS FILED					
<input type="checkbox"/> PRELIMINARY LETTER DATED					
<input type="checkbox"/> STATUTORY NOTICE DATED					
INCREASES (DECREASES) IN INCOME (See attached explanation of items)					
(a) Loss by indemnification					400,776.93
TAXABLE INCOME AS REVISED			\$18,128.02	\$ 14,971.16	
A. LESS: EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS (Alternative tax computation)					
B. INCOME SUBJECT TO TAX			\$18,128.02	\$ 14,971.16	
C. PARTIAL TAX FOR INCOME ON LINE B			\$ 3,988.16	\$ 3,293.66	
D. 25% OF AMOUNT SHOWN ON LINE A (Alternative tax computation)					
E. TAX SURCHARGE					
F. OTHER TAXES					
G. SUBTOTAL (Lines C, D, E and F)			\$ 3,988.16	\$ 3,293.66	
H. TAX CREDITS					
Investment Credit (See page 6)			2,946.60		
I. INCOME TAX LIABILITY (Line G less Line H)			1,041.56	\$ 3,293.66	
J. INCOME TAX LIABILITY SHOWN ON RETURN AND ADDITIONAL ASSESSMENT (OVERASSESSMENT)			\$ 3,988.16	None	
Tentative carryback allowance dated October 7, 1966 Doc. Loc. No. 1335428590002			( 3,988.16)		
K. DEFICIENCY (OVERASSESSMENT)			\$ 1,041.56	\$ 3,293.66	

TAX COMPUTATION

FORM 3613  
(REV. JULY 1969)DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE  
**CORPORATION INCOME TAX**

STATEMENT SCHEDULE

NAME		TAXABLE YEARS ENDED	
		Dec. 31, 1966	Dec. 31, 1967
Federal Bulk Carriers, Inc.			
TAXABLE INCOME AS SHOWN IN:			
<input checked="" type="checkbox"/> RETURN AS FILED			
<input type="checkbox"/> PRELIMINARY LETTER DATED			
<input type="checkbox"/> STATUTORY NOTICE DATED			
INCREASES (DECREASES) IN INCOME (See attached explanation of items)			
(a) Loss by Indemnification		22,240.49	
(b) Net Operating Loss Deduction		356,382.54	337,491.25
TAXABLE INCOME AS REVISED		\$ 41,131.78	\$ 44,825.00
TAX COMPUTATION	A. LESS: EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS (Alternative tax computation)		
	B. INCOME SUBJECT TO TAX	\$ 41,131.78	\$ 44,825.00
	C. PARTIAL TAX FOR INCOME ON LINE B	\$ 13,243.25	\$ 15,016.00
	D. 25% OF AMOUNT SHOWN ON LINE A (Alternative tax computation)		
	E. TAX SURCHARGE		
	F. OTHER TAXES Personal Holding Company tax (See page 6)	31,030.19	
	G. SUBTOTAL (Lines C, D, E and F)	\$ 44,273.44	\$ 15,016.00
	H. TAX CREDITS Investment credit (See page 6)	13,243.25	
	I. INCOME TAX LIABILITY (Line G less Line H)	\$ 31,030.19	\$ 15,016.00
	J. INCOME TAX LIABILITY SHOWN ON RETURN AND ADDITIONAL ASSESSMENT (OVERASSESSMENT)	None	None
	K. DEFICIENCY (OVERASSESSMENT)	\$ 31,030.19	\$ 15,016.00





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Federal Bulk Carriers, Inc.

Statement

Taxable Year Ended December 31, 1962 and  
Taxable Years Ended December 31, 1964 through December 31, 1968

COMPUTATION OF PERSONAL HOLDING COMPANY TAX  
FOR THE TAXABLE YEAR ENDED DECEMBER 31, 1966

Taxable income as revised		\$41,131.78
Additions:		
Contributions deducted	\$ 100.00	
Dividends received deduction	<u>3,197.06</u>	<u>3,297.06</u>
		\$44,428.84
Total		
Deductions:		
Contributions deductible under Section 545(b)(2) of the Internal Revenue Code		<u>100.00</u>
Undistributed personal holding company income		\$44,328.84 X 70% =
Personal Holding Company Tax		<u>\$31,030.19</u>

INVESTMENT CREDIT AND  
INVESTMENT CREDIT CARRYBACK

Investment credit per Form 3468 of the Tax Return for the taxable year ended December 31, 1966		\$18,466.00
Less:		
Applied to the taxable year ended December 31, 1966		<u>13,243.25</u>
Investment credit available to be carried back		\$ 5,222.75
Less:		
Investment credit carried back to the taxable year ended		
December 31, 1963	\$2,276.15	
December 31, 1964	<u>2,946.60</u>	<u>5,222.75</u>
Investment credit from the taxable year ended December 31, 1966 available		<u>\$ None</u>



Federal Bulk Carriers, Inc.

Statement

Taxable Year Ended December 31, 1962 and  
Taxable Years Ended December 31, 1964 through December 31, 1968

## EXPLANATION OF ADJUSTMENTS

(a) It is determined that "loss by indemnification" deductions claimed in the amounts of \$400,776.93 and \$22,240.49 for the taxable years ended December 31, 1965 and December 31, 1966, respectively, do not constitute ordinary loss deductions. Therefore, taxable income is increased in the amounts of \$400,776.93 and \$22,240.49 for the taxable years ended December 31, 1965 and December 31, 1966.

(b) Net Operating Loss Deduction.

No net operating loss deductions have been allowed for the taxable years ended December 31, 1962, December 31, 1963 and December 31, 1964 since it has been determined that there is no net operating loss for the taxable year ended December 31, 1965.

Net operating loss deductions claimed in your tax returns in the amounts of \$356,382.54, \$337,491.25 and \$292,666.24 for the taxable years ended December 31, 1966, December 31, 1967 and December 31, 1968, respectively, have not been allowed since there is no net operating loss for the taxable year ended December 31, 1965. Accordingly, taxable income is increased in the amounts of \$356,382.54, \$337,491.25 and \$292,666.24 for the taxable years ended December 31, 1966, December 31, 1967, and December 31, 1968, respectively.

000004

UNITED STATES TAX COURT

FEDERAL BULK CARRIERS, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 6115-73

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1., 2. and 3. Admits the allegations of paragraphs 1, 2 and 3 of the petition.

4. (a) to (i), inclusive. Denies that the respondent erred as alleged in subparagraphs (a) to (i), inclusive, of paragraph 4 of the petition.

5. (a) Denies the allegations of subparagraph (a) of paragraph 5 of the petition.

(b) and (c) Admits the allegations of subparagraphs (b) and (c) of paragraph 5 of the petition.

(d) Denies the allegations of subparagraph (d) of paragraph 5 of the petition.

(e) to (g), inclusive. Admits the allegations of subparagraphs (e) to (g), inclusive, of paragraph 5 of the petition.

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(h) Admits that the final cost of the Monarch was Can. \$11,236,083. Of this amount, U.S. \$8,000,000 was loaned to Carriers, and such loan was secured by a ship mortgage on the Monarch (the "Ship Mortgage Loan"). Denies the remaining allegations of subparagraph (h) of paragraph 5 of the petition.

(i) to (l), inclusive. Denies the allegations of subparagraphs (i) to (l), inclusive, of paragraph 5 of the petition.

(m) Admits that pursuant to the terms of the sale, Maple replaced Carriers as a party to the first bareboat charter with Imperial, and became the primary obligor on the Ship Mortgage Loan. Denies the remaining allegations of subparagraph (m) of paragraph 5 of the petition.

(n) Admits that simultaneously with the sale of their interest in Tankers, petitioner and Bessemer formed Bessbulk Limited ("Bessbulk," a Canadian corporation) with an initial capital of Can. \$1,943,100. Denies the remaining allegations of subparagraph (n) of paragraph 5 of the petition.

(o) Admits that Bessbulk agreed to pay Maple its annual income to the extent available and necessary to indemnify Maple in the event the Monarch's actual earnings fell short of stated earnings. Denies the remaining allegations of subparagraph (o) of paragraph 5 of the petition.

(p) and (q) Admits the allegations of subparagraphs (p) and (q) of paragraph 5 of the petition.

(r) and (s) Denies the allegations of subparagraphs (r) and (s) of paragraph 5 of the petition.

(t) Admits the allegations of subparagraph (t) of paragraph 5 of the petition.

(u) to (ff), inclusive. Denies the allegations of subparagraphs (u) to (ff), inclusive, of paragraph 5 of the petition.

(gg) Admits that in the taxable year 1966, petitioner paid Maple U.S. \$48,011,81. Denies the remaining allegations of subparagraph (gg) of paragraph 5 of the petition.

(hh) to (ll), inclusive. Denies the allegations of subparagraphs (hh) to (ll), inclusive, of paragraph 5 of the petition.



6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

(Sgd) LAWRENCE B. GIBBS - BG

LAWRENCE B. GIBBS,  
Acting Chief Counsel,  
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,  
Regional Counsel,  
MICHAEL A. MENILLO,  
Attorney,  
Internal Revenue Service,  
26 Federal Plaza (12th Floor),  
New York, New York 10007.

UNITED STATES TAX COURT

FEDERAL BULK CARRIERS, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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Docket No. 6115-73

STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purpose of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits as they may deem to be irrelevant or immaterial.



1. Petitioner Federal Bulk Carriers, Inc. ("Bulk") was incorporated under the laws of the State of New York on November 25, 1955.

2. Petitioner's business address, at the time the petition in this case was filed was at 60 East 42nd Street, New York, New York 10017.

3. Federal income tax returns (Forms 1120) were filed by Bulk for the taxable years ending on December 31 of the years 1962, 1963, 1964, 1965, 1966, 1967, and 1968 with the District Director of Internal Revenue, New York, New York. Copies of those returns are attached as Exhibits 1-A, 2-B, 3-C, 4-D, 5-E, 6-F, and 7-G.

4. Copies of the certified financial statements of Bulk for the years 1956 through 1968 are attached as Exhibits 8-H, 9-I, 10-J, 11-K, 12-L, 13-M, 14-N, 15-O, 16-P, 17-Q, 18-R, 19-S and 20-T.

5. In 1957 Bulk acquired 60% of the outstanding stock of Federal Tankers Limited ("Tankers", a Canadian corporation) for U.S. \$18,837.00, and by September 24, 1959 acquired 60% of Tankers subordinated notes for U.S. \$1,299,070.00. The other 40% interest in Tankers' stock and notes were acquired by Bessemer Securities Corporation ("Bessemer"), a domestic corporation.

6. Tankers was organized to build and charter a 41,246 dwt. tanker, eventually named the Monarch.

7. Tankers organized Federal Petroleum Carriers Limited ("Carriers", a Canadian corporation) as a wholly owned subsidiary to contract for the building of the Monarch.

8. The Monarch was built by Davie Shipbuilding Limited ("Builder") at its shipyard in Lauzon, P.Q., Canada.

9. Construction of the Monarch qualified under the Canadian Vessel Construction Assistance Act ("CVCA Act"), and pursuant thereto the owner of the Monarch was entitled to certain excess depreciation deductions for Canadian income tax purposes. Letters substantiating that the Monarch qualified under the CVCA Act are attached as Exhibit 21-U.



10. The Monarch was launched on June 19, 1959 and was delivered by the Builder on September 24, 1959. 0000001

11. On July 15, 1958, the Monarch was bareboat chartered by Carriers to Imperial Oil Limited ("Imperial", a Canadian corporation), until September 24, 1974. Imperial simultaneously bareboat chartered the Monarch to Tankers for the same period. Tankers simultaneously time chartered the Monarch to Imperial until September 24, 1974. Attached hereto as Exhibit 22-V are the relevant charter and loan agreements consisting of items 1 to 11, inclusive. Copies of the Charters are Items 4, 5 and 6 of Exhibit 22-V.

12. The final cost of the Monarch was Can. \$11,236,083.00. Of this amount U.S. \$8,000,000.00 was loaned to Carriers by institutional lenders (the "Lender"), and such loan was secured by a ship mortgage on the Monarch ("Ship Mortgage Loan"). The Ship Mortgage Loan bore interest at the rate of 5% with respect to \$1,260,000.00 of the principal amount thereof which was due October 1, 1965; 4-1/4% with respect to \$840,000.00 of the principal amount thereof which was due October 1, 1969; and 4-1/4% with respect to \$5,900,000.00 of the principal amount thereof which was due October 1, 1974.

13. Pursuant to §§ 1(c)(iii)(A) and (B) of the Ship Mortgage Loan Credit Agreement and the Charter Assignments appended thereto (pp. 8, 20 of Item 1 of Exhibit 22-V, Ex. B to Item 4 of Exhibit 22-V; Ex. A to Item 5 of Exhibit 22-V; Ex. B to Item 6 of Exhibit 22-V) the trustee for the Lenders became the assignee of the charter payments to be made by Imperial.

14. Pursuant to § 1(B)(ii) of the Ship Mortgage Loan Credit Agreement (pp. 5-6 of Item 1 of Exhibit 22-V) and §4.11 of the Ship Mortgage Guaranty Agreement (pp. 23-24 of Item 8 of Exhibit 22-V) Carriers and Tankers were required to maintain working capital of \$150,000.00 Canadian in Carriers and \$150,000.00 Canadian in Tankers.

15. Pursuant to Article Two of the Ship Mortgage Loan Guaranty Agreement (pp. 6 et seq. of Item 8 of Exhibit 22-V), Bulk and Bessemer guaranteed Carrier's obligations under the Ship Mortgage Loan.

16. Bulk maintained a daily desk log of the operations of the Monarch from the date of its delivery until November 19, 1965. Extracts from such log are attached as Exhibit 23-W.

17. Attached as Exhibits 24-X, 25-Y, 26-Z, 27-AA, 28-BB, 29-CC, 30-DD, 31-EE and 32-FF are audited financial statements of Tankers and Carriers.



18. Attached as Exhibit 33-GG are agreements made in May, 1961 pursuant to which the Lenders agreed to waive a 000000 default in the working capital requirement described in paragraph 14 of this stipulation.

19. Bulk and Bessemer sold their stock (consisting of 30,000 shares) and notes (face value \$2,095,000.00 Canadian) in Tankers as of July 31, 1961 to Maple Leaf Mills Limited ("Maple", a Canadian corporation) for Can. \$2,325,000.00 pursuant to a sales agreement (the "1961 Sales Agreement"), a copy of which is attached as Exhibit 34-HH. The parties also agreed to a "scheme of reorganization" whereby Maple was to become the owner of the vessel by purchase from Carriers for Canadian \$11,286,082.00 payable by Maple's non-interest bearing promissory note. Maple was to assume the obligations of Carriers under the indenture and first mortgage bonds and the vessel was to be chartered by Maple to Imperial under the first bareboat charter, and by Imperial to Tankers under the sub-charter, and by Tankers to Imperial under the 15-year time charter. This arrangement permitted Maple to deduct depreciation on the ship and interest under the debt obligation for purposes of the Canadian income tax.

20. Simultaneously, with the sale of their interest in 000000 Tankers, Bulk and Bessemer formed Bessbulk Limited ("Bessbulk"), a Canadian corporation with an initial capital of Can. \$1,943,000.00, consisting of a portion of the proceeds of the sale to Maple Leaf.

21. At the same time, pursuant to a commitment agreement (the "Commitment Agreement," a copy of which is attached as Exhibit 35-II), Bulk and Bessemer agreed with Maple to cause Bessbulk to become party to an indemnity agreement (the 1961 Indemnity Agreement", (a copy of which is attached as Exhibit 36-JJ) with Maple.

22. Under the 1961 Indemnity Agreement, Bessbulk agreed to pay Maple its annual income to the extent available and necessary to indemnify Maple in the event the Monarch's actual earnings fell short of stated earnings.

23. Under the 1961 Indemnity Agreement, Maple agreed that at the expiration of the charter to Imperial, or upon the earlier sale of the Monarch, Bessbulk would receive 35% of the Monarch's actual earnings over stated earnings.

24. Actual loss from operation of the Monarch in excess of Bessbulk's net income was to be paid to Maple out of the



net assets of Bessbulk upon expiration of the charter to 000000  
Imperial, or upon the earlier sale of the Monarch by Maple  
Leaf.

25. Pursuant to the 1961 Sales Agreement and 1961  
Indemnity Agreement, Maple replaced Carriers as a party to  
the first bareboat charter with Imperial, and became primary  
obligor on the Ship Mortgage Loan.

26. Under the Ship Mortgage Loan Guaranty Agreement  
(Item 8 of Exhibit 22-V) Bulk remained a guarantor of the  
Ship Mortgage Loan.

27. The 1961 Indemnity Agreement was amended for  
technical but not substantive reasons on April 12, 1962,  
remaining effective as of July 31, 1961; and performance by  
Bessbulk under this amended agreement continued to be  
guaranteed by Bulk and Bessemer. A copy of the guaranty  
agreement is attached as Exhibit 37-KK.

28. Under the 1961 Sales Agreement and 1961 Indemnity  
Agreement, the value of Bulk's interest in Bessbulk was to  
be increased by 60% of the net income and gain realized on  
the assets held in the name of Bessbulk; and 60% of 35% of the  
excess of net revenue increases over net revenue decreases  
experienced by the Monarch during the charter period; and  
decreased by 60% of the net losses realized on the assets

held in the name of Bessbulk, and by 60% of the net revenue decreases of the Monarch. 000026

29. As of June 20, 1963, Bulk and Bessemer agreed to sell their Bessbulk shares and debentures to Maple pursuant to a sales agreement (the "1963 Sales Agreement"), a copy of which is attached as Exhibit 38-LL, together with other agreements related to the 1963 Sales Agreement.

30. Under the 1963 Sales Agreement, the purchase price of the Bessbulk shares and debentures was to be determined at the earlier of the expiration of the charter of the Monarch to Imperial or the sale of the Monarch by Maple.

31. Under the 1963 Sales Agreement, the purchase price of the Bessbulk shares and debentures was to be based upon the net worth of Bessbulk, less the "charter period deduction" (1963 Sales Agreement, §§ 2,1(a), 1(t)(ii), 1(r), 5, 6). The "charter period deduction" was determined by subtracting any "net revenue decrease" from "net revenue increase" aggregated to the time of expiration of the Imperial charter or the sale of the Monarch. (1963 Sales Agreement, §§ 1(p)-(r)). "Net revenue increase" was the yearly excess of actual earnings of the Monarch over projected earnings. "Net revenue decrease" was determined, in a year in which there were actual earnings



(i.e., a year in which the Monarch did not operate at a loss, but did not meet stated earnings), as the excess of projected earnings over actual earnings; and in a year in which there were actual losses, as the aggregate of projected earnings plus the amount of actual loss. Any distributions by Bessbulk to Maple reduced the amount of "charter period deduction".

32. The Monarch was managed from the date it was placed in service until April 30, 1962 by Mathiasen's Tanker Industries, Inc. ("Mathiasen"). On July 31, 1961, pursuant to an agreement with Tankers, a copy of which is attached as Exhibit 39-MM, Bessbulk agreed to supervise the Managers.

33. Pursuant to an agreement dated May 1, 1962, a copy of which is attached as Exhibit 40-NN, Leif Hoegh & Co., Inc. ("Hoegh") replaced Mathiasen as Manager of Monarch, and Bessbulk continued to supervise the manager.

34. Pursuant to agreement dated June 20, 1963, a copy of which is attached as Exhibit 41-00, Bulk replaced Bessbulk as supervisor of the manager of the Monarch.

35. At no time did Carriers, Tankers or Bessbulk have any employees.

36. Pursuant to an agreement dated June 1, 1964, a copy of which is attached as Exhibit 42-PP, Bulk replaced Hoegh as manager of the Monarch.

37. The Monarch was sold to Oswego Unity Corporation, an unrelated third party, on November 19, 1965.

38. Attached as Exhibit 43-QQ is an agreement dated November 18, 1965 (the "Bessbulk Agreement") between Bulk, Bessemer and Maple which terminated the 1963 Sales Agreement and provided for a payment to Bulk for its interest in Bessbulk based upon the then net worth of Bessbulk, less the aggregate losses of the Monarch over distributions from Bessbulk already paid to Maple.

39. At the time of execution of the Bessbulk Agreement, it was estimated that 60% of the net revenue decreases of the Monarch over the net income of Bessbulk from July 31, 1961 to November 18, 1965, was \$501,684.52. Sixty percent of the net capital gain realized upon the liquidation of a part of the assets held in Bessbulk, which assets were held for more than 6 months, was \$100,907.59. On the basis of these computations, under § 2(c) of the Bessbulk Agreement, Maple paid Bulk Can. \$768,558.00 for its shares and debentures in Bessbulk. Under §2(e) of the Bessbulk Agreement, adjustment in the price was to be made after final audit of the profits or losses of the Monarch for the period ending as of the date of the Bessbulk Agreement.

40. Under §§ 1(f), 3 and 4 of the Bessbulk Agreement, Bulk was required to contribute to a deposit (the "Deposit") under Section 4 of the CVCA Act in order that Maple would obtain an appropriate certificate from the Canadian Maritime



Commission, which, when presented to the Canadian Income Tax Department, would not cause recapture of excess depreciation claimed on the Monarch by Maple under the predecessor of Section 13(13) of the present Canadian Income Tax Act. 00000.9

41. After a final accounting was prepared in 1966, the net revenue decrease and charter period deduction for the period June 25, 1961 and November 1965 was calculated as set forth on the attached Exhibit 44-RR.

42. Attached as Exhibit 45-SS is a copy of the case Maple Leaf Mills Ltd. v. Minister, 72 Dom. Tax Cas. 6166 (1972).

43. During 1966, in compliance with the CVCA Act, the Deposit was sold in a manner that enabled Maple to obtain the requisite certificate from the Canadian Maritime Commission. The sale of the deposit resulted in a gain, 60% of which was \$25,771.32.

44. In taxable year 1966, Bulk paid Maple U.S. \$22,240.49, the difference between U.S. \$549,696.33 and U.S. \$527,455.85.

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WILLIAM F. INDOE,  
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UNITED STATES TAX COURT

FEDERAL BULK CARBONATE, INC.

Petitioner.

Vs.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

Docket No. 6115-73

HEARING AT New York, New York  
DATE October 23, 1975  
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UNITED STATES TAX COURT

**FEDERAL BULK CARRIERS, INC.**

Petitioner

VS

**COMMISSIONER OF INTERNAL REVENUE**

Respondent

DOCKET NO. 6115-73

LOCATION OF HEARING: New York, New York

DATE: October 29, 1975

BEFORE: Honorable Arnold S. Raum

APPEARANCES: Michael A. Menillo  
Attorney for Respondent

William F. Indoe  
Attorney for Petitioner

I N D E X

RESPONDENT'S  
EXHIBIT No.

DESCRIPTION

IDENT.

EVID.

1 thru 44S

Stipulation of Facts

2

2



P R O C E E D I N G S

0000043

2

1 THE CLERK: All rise. Gentlemen, state your  
2 appearance for the record, please.

3 MR. INDOE: William Indoe, I-n-d-o-e, for  
4 petitioner.

5 MR. MENILLO: Michael A. Menillo for respondent.  
6 Your Honor, we would like to submit the original and one  
7 copy of the Stipulation of Facts with attached Exhibits  
8 1A through 45 SS.

\*\*\* 9 THE COURT: We will receive your stipulation  
10 and your exhibits. The parties made available on an  
11 informal basis for the Court a copy of the proposed  
12 Stipulation of Facts yesterday. Has there been any changes  
13 in the stipulation as filed as against the copy that was  
14 made available to the Court yesterday?

15 MR. MENILLO: No, Your Honor, there have been no  
16 changes.

17 THE COURT: Thank you. Proceed.

18 MR. INDOE: May it please the Court. The issue  
19 involved in this case is whether losses in the amounts  
20 of \$501,684.00 and \$48,011.00 recognized by petitioner  
21 Federal Bulk, B-u-l-k Carriers, Inc., in 1965 and 1966  
22 respectively are ordinary losses as the petitioner contends  
23 or whether such losses are capital losses and the Commissioner  
24 contends.

25 THE COURT: Are both sides in agreement that

1 losses -- recognized losses in fact were sustained in the  
2 amounts that you stated? So that the only remaining  
3 question is whether their capital or ordinary?

4 MR. INDOE: Yes, sir. As I understand the  
5 Commissioners position, that is correct.

6 MR. MENILLO: Yes, Your Honor, we are in  
7 agreement that their word loss of the word distributions  
8 made, it's just the characterization.

9 THE COURT: I see, thank you very much.

10 MR. INDOE: The years 1962, 1964, 1967 and 1968  
11 are involved in this case solely on account of carry backs  
12 and carry overs claimed by petitioner Section 172 of the Code  
13 in respect to the 1965 and 1966 losses. The facts in this  
14 case have been fully stipulated and show that in 1959,  
15 petitioner became the beneficial owner of the 60% interest  
16 in a newly constructed forty one thousand ton tanker called  
17 the Monarch. This ship was chartered upon delivery to --  
18 to an unrelated third party, Imperial Oil Limited --  
19 the limited is spelled out. A Canadian corporation for  
20 fifteen years. In 1961, petitioner caused ownership of  
21 the Monarch to be transferred to Maple Leaf Mills Limited  
22 a Canadian corporation unrelated to petitioner. Under the  
23 1961 agreements with Maple Leaf, petitioner and Maple Leaf  
24 in effect operated the Monarch a joint account. If the  
25 operation of the ship was profitable, petitioner benefited



1 to the extent of 21% of the profits. If the operation was  
2 not profitable, petitioner agreed to pay Maple Leaf 60%  
3 of the losses. In 1963 the agreements between Maple Leaf  
4 and petitioner were revised in effect to increase peti-  
5 tioners interest in profits from operations of the Monarch  
6 from 21% to 60%. Petitioner agreed to share with Maple  
7 Leaf in the operations of the Monarch until the charter  
8 with Imperial Oil expired or earlier if the Monarch was  
9 sold. In 1965, the Monarch was sold to an unrelated  
10 third party, bringing petitioners interest in the operation  
11 of the Monarch to an end. Petitioner share of the accrued  
12 operating losses of the ship from 1961 was then estimated  
13 to be \$501,684.00. Petitioner's actual share of such accrued  
14 losses, which were not finally determined until 1966, was  
15 \$549,696.00 and the balance of \$48,011.00 was treated as  
16 incurred in 1966. Petitioner contends the foregoing losses  
17 are ordinary losses deductible from ordinary income, either  
18 as losses under Section 162 of the Code arising from the  
19 joint operation of the Monarch with Maple Leaf, or as  
20 indemnity losses deductible under Section 165 of the Code.  
21 The Commissioner on the other hand, contends that petitioner  
22 sold property to Maple Leaf, and that the losses realized  
23 in 1965, in 1966 are capital losses growing out of a re-  
24 troactive adjustment in a sales price. This issue involving  
25 the same facts and documents that have been stipulated in

1 this case, and involving similar legal issues, has already  
2 been decided by a competent Appellate Court. On the other  
3 side of the transaction, for Canadian income tax purposes,  
4 Maple Leaf reported the Monarch losses absorbed by  
5 petitioner and paid over to Maple Leaf as an abatement of  
6 a purchase price and not as operating income. This is  
7 the same position that respondent is taking in this  
8 case. The Canadian Department of National Revenue  
9 reassessed Maple Leaf's income on the basis that the payments  
10 were from the operations of the Monarch, the same position  
11 that petitioner is taking in this case. Maple Leaf  
12 lost at the trial level and on appeal, the Federal Court  
13 of Canada, in the case of Maple Leaf Mills Limited versus  
14 Minister of National Revenue, a copy of which is included  
15 in the stipulation, sustained the decision below. The  
16 Appellate Court included that the operating loss sustained  
17 by petitioner and paid over to Maple Leaf was and I quote  
18 "a receipt of income in another way from the business of  
19 operating the ship" end of quote. Thus a competent Canadian  
20 Court already has found that Maple Leaf and petitioner  
21 intended to operate the Monarch jointly, and did not intend  
22 to buy and sell property with a retroactive sales price  
23 adjustment. Certainly if the Canadian case were a U. S.  
24 case, this Court would be obligated to follow its conclusion  
25 and summarily find for the petitioner



1 though not a U.S. case, this Court should follow the  
2 Canadian case since it already decides the factual issues  
3 in this case. Thank you very much.

4 MR. MENILLO: Your Honor, I would just like to  
5 give a brief resume of the facts as respondent sees them  
6 and conclude with the positions of both of the parties.  
7 In 1957 the petitioner, Federal Bulk Carriers Investment  
8 Securities Corporation, entered into a joint venture to  
9 build an oil tanker eventually named the S T Monarch.  
10 The joint venture was carried out in the ratio of 60%, 40%  
11 through Federal Tankers Limited, a Canadian corporation  
12 was to contract for the building of the Monarch, through  
13 Federal Petroleum Carriers Limited, which was a wholly  
14 owned subsidiary of Tankers.

15 THE COURT: Is there a problem here of ignoring  
16 a corporate diction in respect of the corporations that  
17 were organized to built or contract for the building of  
18 the Monarch?

19 MR. MENILLO: No, Your Honor, I wouldn't say  
20 that was involved.

21 MR. INDOE: We have two positions, Your Honor.  
22 One is that the losses were indemnity losses deductible  
23 under Section 165, which leaves all the parties in place  
24 as the corporations are established. Our second position  
25 is that the Monarch was operated for joint account. And

1 that a corporate entity which was created in 1961 called  
2 Bess Bulk Limited, a Canadian corporation, was in effect  
3 a cash drawer or a conduit for losses in -- actually  
4 incurred by petitioner. And the answer to your question is  
5 yes, if the second position requires the corporate entity  
6 be viewed not as a liable corporation but as cash drawer  
7 or conduit. And that is precisely what the Canadian Court  
8 found in the case that I cited in my opening statement.

9 THE COURT: Does the government contest that?  
10 Does the government assume along with petitioner that the  
11 Monarch can be treated as being a owned and operated by  
12 the corporations that are ultimately interested in it  
13 rather than buy subsidiary entity?

14 MR. INDOE: I read over last night, the draft  
15 of the stipulation the parties filed this morning. I  
16 did not have before me the exhibit nor did I make a indepth  
17 study of the stipulation. But I was confused about the  
18 extent of which the -- the subsidiary corporate entities  
19 play the part in the issue that was before the Court. Now  
20 whether the parties were ignoring the subsidiary corporate  
21 entities and treating the Monarch as simply being owned  
22 by those corporations, that had the ultimate equity  
23 interest in it.

24 MR. MENILLO: Your Honor, the respondent hasn't  
25 been ignoring the corporate entities and we've been taking



1       them at face value as they were originated. My understanding  
2       of the main issue was, something like, it was our position,  
3       respondents position that there was a sale and that these  
4       subsequent payments were offsets to that sale. Where as --

5               THE COURT: As the sale of what. The Monarch?

6               MR. MENILLO: No, the sale of stock. The Tanker  
7       stock was sold by the petitioner to Maple Leaf Mills and  
8       simultaneously with that sale agreement, there was an  
9       indemnity agreement which provided that the petitioner.  
10      Investment Security would set up a separate corporation  
11      called Bess Bulk and that the proceeds of the sale of the  
12      Tanker stock would be deposited with Bess Bulk and that if  
13      the earnings of the S T Monarch didn't reach a certain  
14      level, then Bess Bulk would pay the purchaser certain  
15      amounts of schedules and ratios and what not. Therefore,  
16      it was our position that the endimnity agreement which  
17      was taken as an indemnity loss on returns, was part and  
18      parcel of the original sale and it amounted to merely an  
19      offset for the purchase price.

20              THE COURT: Well, I'm still not clear. I'm  
21      inquiring of the parties, that whether I'm an dealing -- I  
22      am to deal here with the sale of a vessel or with the  
23      sale of stock.

24              MR. INDOE: Well, that Your Honor, is part of  
25      the issue.

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1 THE COURT: Is that -- is that --

2 MR. INDOE: That is part of the issue --

3 THE COURT: -- is that the issue in the --

4 MR. INDOE: -- yes, yes, Your Honor.

5 THE COURT: -- is that the issue in the case.

6 MR. INDOE: That is one of the factual issues  
7 in the case.

8 THE COURT: And if I'm dealing simply with the  
9 sale of stock, does that --

10 MR. INDOE: That does not dispose of the case.

11 THE COURT: That would dispose of your first  
12 argument, I take it.

13 MR. INDOE: That would.

14 THE COURT: Your 162 argument?

15 MR. INDOE: Yes.

16 THE COURT: Adversely to you?

17 MR. INDOE: Yes, yes, Your Honor.

18 THE COURT: And you would then contend your still  
19 left with the argument under 165?

20 MR. INDOE: Yes, Your Honor. We are not -- we  
21 are not suggesting nor are we contending that the corpor-  
22 ations called Tankers and Carriers be ignored. The one  
23 that we are focusing on is the corporation called Bess  
24 Bulk which was formed in 1961. In 1961, petitioner owned  
25 60% of the stock of Tankers. Tankers owned all the stock



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1 of Carriers, and the reason for this elaborate structure  
2 had to do with the financing of the vessel. In 1961,  
3 petitioner and the other 40% owner of the stock of Tankers  
4 Company called Bessemer Securities, sold the stock in  
5 Tankers to Maple Leaf, the Canadian corporation. We are  
6 not saying that that sale should be ignored or that sale  
7 should be treated as the sale of the vessel. That is the  
8 transaction that took place in 1961 and we are not saying  
9 it's anything other than a sale of stock. But, what we  
10 are saying, is that the sale of stock resulted in the  
11 vessel becoming owned by Maple Leaf Mills. Simultaneously  
12 with the sale of the vessel, there was a Canadian corpora-  
13 tion created called Bess Bulk, which we are saying is  
14 an accounting mechanism which in effect operated so that  
15 the losses between -- the losses or profits which would  
16 be accrued on the operations of the ship would be shared  
17 between Maple Leaf on the one hand and petitioner and  
18 Bessemer Securities on the other hand. And that is the  
19 issue before the Court. Whether the parties in 1961 when  
20 the stock was sold and Maple Leaf became the owner of the  
21 vessel, the transaction was entered into and Maple Leaf  
22 owned the vessel, that the parties jointly operated the  
23 vessel at that point in time. And that is what the  
24 Canadian Court found for Canadian tax purposes.

25 THE COURT: Well, which corporation had title to

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1 the Monarch upon that transaction?

2 MR. INDOE: Legal title was in -- in Maple  
3 Leaf Mills Canadian Corporation.

4 THE COURT: Not in Bess Bulk?

5 MR. INDOE: Not in Bess Bulk.

6 MR. MENILLO: It was originally in Tankers, but  
7 then there's a separate purpose in that, whereby Maple  
8 Leaf purchased, aside from the sale of the stock, there's  
9 subsequently another sale by Tankers of the ST Monarch to  
10 Maple Leaf, and this was done so that could --

11 THE COURT: And Bess -- and -- and what was --

12 MR. MENILLO: -- take depreciation under  
13 Canadian law.

14 THE COURT: Mr. Indoe, in your view, what -- what  
15 was Bess Bulks function in effect of the operation of the  
16 Monarch?

17 MR. INDOE: Is was -- it was what I call in the  
18 petitioner cash drawer.

19 THE COURT: What?

20 MR. INDOE: A cash drawer. It was an accounting  
21 mechanism to account for the sharing of the profits and  
22 losses on the joint operations of the vessel.

23 THE COURT: Well, I don't understand that concept,  
24 and perhaps you can spell it out for me better in your brief  
25 than I understand it now.



1 MR. INDOE: Well, I think Your Honor, if you  
2 peruse the Canadian case which is attached as an exhibit  
3 to the Stipulation of Facts, and I will admit that the  
4 facts are quite complicated and quite cumbersome as you  
5 can see in the stack of documents, but the Canadian case  
6 -- the Canadian Court went through that very issue and  
7 found that that is in fact what the parties did. They  
8 jointly operated the vessel.

9 MR. MENILLO: I disagree with that.

10 THE COURT: Well, would you tell me what you  
11 mean by a cash drawer? What function did that -- did that  
12 Bess Bulk play?

13 MR. INDOE: Well, normally, in a joint --

14 THE COURT: In your view, of course.

15 MR. INDOE: In my view. Normally the -- if two  
16 parties agree to jointly operate a property, be it a vessel  
17 or a building or a coal mine, it's the -- the gains and  
18 losses are shared through a partnership agreement. In this  
19 particular instance, the partnership agreement contemplated  
20 setting up a corporation and instead of the losses being  
21 shared, through the mechanism of an agreement, they were  
22 shared through a mechanism of a -- of a corporation. The  
23 corporation had certain assets on which it received funds,  
24 and those funds were used to offset losses, and if there  
25

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1 losses in excess of the earnings of the corporation, then  
2 the assets of that corporation which were solely contributed  
3 by -- by petitioner and Bessemer, were paid over to their  
4 partner, Maple Leaf Mills.

5 THE COURT: But, the vessel in your view was  
6 owned by Maple Leaf?

7 MR. INDOE: Yes. It is not untypical --

8 THE COURT: And Maple Leaf -- and Maple Leaf  
9 operated the vessel? Its employees?

10 MR. INDOE: No, the employees -- the persons that  
11 the actual crewing of the vessel, was done by an unrelated  
12 third party. When a vessel is time chartered, it is typical  
13 that -- that a manager of the vessel be found, and the  
14 manager hires the crew and provisions the ship. They were  
15 not employees of Maple Leaf or petitioner. They were  
16 employees of some third party manager of the vessel and they  
17 were a series of managers of this particular vessel.

18 THE COURT: I was confused further by this  
19 Stipulation of Facts in -- in its reference to both  
20 gearboat and time charters. Are these different charters  
21 or types of charters critical in the consideration of this  
22 case?

23 MR. INDOE: No, sir. In fact the Canadian case  
24 makes a point and says that the multiplicity of charters  
25 is irrelevant in determining the issue of whether there's



1 a operating income or adjustment of sales price.

2 THE COURT: Does the government agree to that?

3 MR. MENILLO: Yes, it does. The fact that it was  
4 a bareboat charter -- time charter has no bearing on really  
5 on issues.

6 THE COURT: Well, there seems to be charters that  
7 were going back and forth.

8 MR. INDOR: Yes, yes Your Honor, they were  
9 included in the stipulation as a means of -- of explaining  
10 the documents, in other words, we could not excerpt  
11 pages from the documents that are relevant to this case  
12 because, for example, their definitions on page one which  
13 apply to page sixty that we're referring and so what  
14 we decided was that we would stipulate the existence of  
15 all the documents and just explain what the various  
16 documents are, we cited these various charters. The pur-  
17 pose of the charters, and I -- I'm not speaking of as  
18 a maritime expert now, but as I understand the purpose of  
19 this multiplicity of charters; is to obtain a certain  
20 kind of financing for the vessel. In other words, the  
21 lenders only -- will only lend with respect to time charter  
22 and not with respect to bareboat charter. And there just  
23 maritime complications for doing it the way they did, but  
24 in my view, this Court need not consider the existence of  
25 those charters as being relevant to the issues in this case.

1 THE COURT: Might it have some relevance as to  
2 the function that Bess Bulk played?

3 MR. INDOE: No, Your Honor. I don't think it  
4 does.

5 THE COURT: I'm still troubled by Bess Bulk and  
6 its function in the scheme of things. You refer to what  
7 is an accounting device. Did it have assets?

8 MR. INDOE: Yes, Your Honor, it did.

9 THE COURT: And what were the assets?

10 MR. INDOE: Well --

11 THE COURT: Were they simply, funds which it  
12 received from the -- the charter of the vessel.

13 MR. INDOE: No. The funds were placed in Bess  
14 Bulk by petitioner and Bessemer Securities.

15 MR. MENILLO: They were the proceeds from the  
16 sale of the Tanker stock to Maple Leaf.

17 MR. INDOE: Liquid assets.

18 THE COURT: And who or what entity received  
19 payments from the charter of the vessel? That was Imperial  
20 that chartered the vessel.

21 MR. INDOE: Yes, Your Honor. Imperial chartered  
22 the vessel.

23 THE COURT: To whom did Imperial make payments?

24 MR. INDOE: It made payments to Maple Leaf, the  
25 owner of the vessel.



1 THE COURT: And not to Bess Bulk?

2 MR. INDOE: And not to Bess Bulk.

3 THE COURT: And the only funds that Bess Bulk had  
4 were the funds which the petitioner and Bessemer paid  
5 into it?

6 MR. INDOE: Yes, Your Honor.

7 THE COURT: What happend to those funds? Were  
8 they simply held.

9 MR. INDOE: They were -- the funds were held  
10 in Bess Bulk invested under the direction of Bessemer  
11 Securities which is an investment banking firm. The  
12 earnings --

13 THE COURT: And under whose control was it?  
14 Was this under Maple Leafs control?

15 MR. INDOE: The investment of the funds was under  
16 the control of Bessemer Securities. They had discretion  
17 to invest the funds within a list of -- a long list of  
18 acceptable securities.

19 THE COURT: What was the purpose of this  
20 arrangement?

21 MR. INDOE: The purpose of the arrangement in  
22 our view was, well it goes -- if I can step back a couple  
23 of steps. In our view petitioner and Bess Bulk, placed  
24 the funds into Bessemer Securities and we say that that  
25 was a deposit made under the partnership arrangement

1 between petitioner, Bessemer and Maple Leaf.

2 THE COURT: This is -- in some fashion or  
3 another, for the benefit of Maple Leaf I gather.

4 MR. INDOE: Yes, it was. Maple Leaf insisted  
5 upon it.

6 THE COURT: This is kind of a guarantee of some  
7 sort?

8 MR. INDOE: Yes, it was a guarantee of some sort.  
9 It's the some sort that's the issue before the Court and I  
10 would see it.

11 THE COURT: And your second issue you -- that  
12 you refer to as the 165 issue revolves around that  
13 arrangement?

14 MR. INDOE: Yes, Your Honor. That is -- my  
15 second issue -- my -- my -- my indemnity payment issue if you  
16 will, was the way in which the petitioner filed its tax  
17 return. That is, the way the returns were prepared, it  
18 claimed the loss under Section 165 and the deficiencies  
19 were assessed and we had the Canadian case decided in  
20 before us. It seemed only consistent to take the same  
21 position in the United States that the Canadian Court did  
22 in Canada and said that there was a joint arrangement to  
23 operate the vessel.

24 THE COURT: And in your view, the decision of the  
25 Canadian Courts supports your first position rather than



1 the second?

2 MR. INDOE: Yes. It doesn't reach the second.

3 THE COURT: It doesn't reach the second.

4 MR. INDOE: In my view.

5 THE COURT: I see. Well, I interrupted Mr.  
6 Menillo to considerable extent in connection with these  
7 interchanges, suppose you pick up if you can Mr. Menillo  
8 and continue.

9 MR. MENILLO: Thank you, Your Honor. You  
10 probably conferred most of what I was about to say, but  
11 on a chance that we missed something --

12 THE COURT: Well -- it's sufficient -- it's  
13 sufficiently involved that perhaps restatement and  
14 different words might be clarified.

15 MR. MENILLO: We had gotten to the point where  
16 the petitioner, Federal Bulk and Bessemer had entered into  
17 the joint venture to build this oil tanker, the ST Monarch.  
18 The ship was subsequently completed and then as we have  
19 already gone over, an intricate series of charters and  
20 subcharters were negotiated. Then on July 31st, 1961,  
21 Federal Bulk and its joint venture of Bessemer, agreed to sell  
22 their tanker shares and subordinated notes to Maple Leaf Mills  
23 Limited which was a Canadian corporation for \$2,325,000.00  
24 Canadian. Simultaneously with the sale of the interest in  
25

1 Tankers, Bulk and Bessemer formed Bess Bulk Limited which  
2 was also a Canadian Corporation, with an initial capital  
3 of \$1,943,000.00 Canadian, consisting of a portion of the  
4 proceeds of the same of the Tanker stock to Maple Leaf.  
5 Bulk and Bessemer further agreed with Maple Leaf to cause  
6 Bess Bulk to become a party to an indemnity agreement  
7 whereby Bess Bulk agreed to pay Maple its annual income to the  
8 extent available and necessary to indemnify Maple in the  
9 event the Monarch's actual earnings fell short of stated  
10 earnings. And this was quite involved, their net increases  
11 and decreases, it was specifically pointed out how this  
12 was to be determined. And in the event that the profits  
13 went -- in the event that the extent of the profits was  
14 lower than -- excuse me -- what was so low that the earnings  
15 of Bess Bulk couldn't cover it, then they were to dip into  
16 the capital itself.

17 THE COURT: And by the earnings of Bess Bulk, you  
18 mean what?

19 MR. MENILLO: Well, as --

20 THE COURT: Is this the --

21 MR. MENILLO: As Mr. Indoe pointed out, the money  
22 that was put into Bess Bulk was invested, you know, passive  
23 investments, by Bessemer Securities, so they did have a  
24 certain income each year.

25 THE COURT: Well, did the income -- was the



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1 income that's referred to simply dividends or interest that  
2 was thrown out by the investment?

3 MR. MENILLO: Yes.

4 THE COURT: Or did it include also profits from  
5 trading?

6 MR. INDOE: It included only dividends and  
7 interest, but it would have included profits of the operation  
8 of the Monarch if the Monarch were a profit turned out in  
9 fact to be profitable. Which of course, the Monarch was  
10 not profitable or we wouldn't be here today.

11 MR. MENILLO: To the extent that it wouldn't have  
12 to pay these increases. As the result of the indemnity  
13 agreement of which Bess Bulk was a party, certain payments  
14 were made to Maple Leaf in 1965 and 1966. These payments  
15 were reported by the petitioner as tax returns for 1965  
16 and 1966 as quote "losses by indemnification" end  
17 quote. And were thus treated as ordinary losses. Now, it's  
18 respondents position that the so called indemnity payments  
19 were part and parcel to the sale in 1961 of petitioners  
20 interest in Federal Tankers Limited to Maple Leaf.  
21 Accordingly, the payments served merely as an offset of the  
22 sales price and cannot be said to be ordinary losses  
23 deductible in the years of payment. Should also note, that  
24 we do have another issue involving the personal holding  
25 company tax in 1966 as defined by Section 542 of the Internal

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1 Revenue Code. It's respondents position that the facts  
2 submitted will support the determination and substantiate  
3 the imposition of that tax. It is also my understanding  
4 that the petitioner does not dispute the fact that it  
5 was a personal holding company, but, does dispute the  
6 imposition of the tax and the -- the disposition of the  
7 basic issue here will decide whether or not there was any  
8 undistributable taxable income.

9 THE COURT: Well, in other words, once the Court  
10 decides the basic issue, does the personal holding company  
11 issue --

12 MR. MENILLO: Would follow up --

13 THE COURT: -- follow automatically?

14 MR. MENILLO: Yes, Your Honor.

15 MR. INDOE: Yes, Your Honor, I agree with that.

16 THE COURT: Thank you very much.

17 MR. MENILLO: I'd just like to state one other  
18 point, Your Honor. Concerning that Canadian case. I know  
19 this isn't the time to really go into it, but, I just  
20 would like to put it on the record that the respondent is  
21 in disagreement as to the petitioners interpretation of  
22 that case. We feel it's not dispositive of the issue in  
23 this case, that even if the interpretation of the decision  
24 made by the petitioner is accurate, it's not necessarily  
25 inconsistent with the respondents position in this case.



1 This will be brought out on brief. Thank you, Your Honor.

2 THE COURT: Is the nature of the Canadian law  
3 the significance here? Is it important to inquire as to  
4 whether the Canadian Revenue Laws are substantially  
5 identical in this -- in respect to present controversy to  
6 the code that we have before us?

7 MR. MENILLO: I think the Canadian case was  
8 determined not so much on the law itself, but on the  
9 substance of the transactions. It was more or less a  
10 factual decision, with legal implications of course, but  
11 it wasn't resolved on a specific statute or specific item  
12 of law in Canada.

13 THE COURT: So, that we're not dealing here with  
14 any particular concept in Canada of what constitutes  
15 capital -- capital transaction as distinguished from an  
16 ordinary transaction under the Canadian statutes?

17 MR. MENILLO: No, Your Honor. I don't believe so.

18 MR. INDOE: I would generally agree with Mr.  
19 Menillo's conclusion. The Canadian case, in fact, cites no pro-  
20 visions of the Canadian Income Tax Act. It is purely a  
21 question of whether there was adjustment in a sales price  
22 or whether -- whether the losses suffered by petitioner  
23 and paid over to Maple Leaf were operating income.

24 MR. MENILLO: I would disagree with that to some  
25 extent.

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1 MR. INDOE: Well.

2 THE COURT: Disagree with what. With the analysis  
3 or --

4 MR. MENILLO: With the analysis.

5 THE COURT: -- the conclusion.

6 MR. MENILLO: Well, with the analysis. As I  
7 read the case, they simply found that Maple Leaf received  
8 payments which should have included as ordinary income.  
9 They didn't go into the question of what those distributions  
10 should be characterized as -- as they came from the  
11 petitioner, Federal Bulk. They may have went to the  
12 question of how it should be characterized as received.

13 THE COURT: Well, if the government is right,  
14 Mr. Indoe, in its position that this is merely an adjustment  
15 in purchase price; would that dispose of both of your  
16 positions?

17 MR. INDOE: Yes. If the government is correct --

18 THE COURT: Right on the --

19 MR. INDOE: -- that the government is correct,  
20 and it disposes of our case.

21 THE COURT: Well, I didn't mean to put the thing  
22 in so simplistic a term, but, the approach to a case may  
23 often be made from many directions, and there are various  
24 cases that deal with the adjustments in purchase price,  
25 some of them perhaps having no relevance here, but cases



1 like the Arrowsmith case, do raise some basic philosophic  
2 questions as to purchase price adjustments, and if the  
3 matter was approached from that angle I was just wondering  
4 whether that would just dispose of the entire matter.

5 MR. INDOE: No. I think it -- I - I think it  
6 does dispose of the entire matter. The governments position  
7 as I understand it is that this is an adjustment in purchase  
8 price. Our position is that this case is -- is not an  
9 Arrowsmith case from one of two ways. One, it's -- it's  
10 an indemnity loss under Section 165 growing out of a  
11 participation in operating profits and losses occurring  
12 after a transaction was taken has taken place, where  
13 secondly, it's in the nature of a partnership arrangement  
14 taking place after another transaction has taken place.

15 THE COURT: By partnership, you mean joint  
16 venture.

17 MR. INDOE: Joint venture. Yes, Your Honor.  
18 Joint operation of the -- of the vessel. I -- the  
19 government --

20 THE COURT: Actually neither of them operated  
21 the vessel. The vessel was operated by Imperial, was it  
22 not?

23 MR. INDOE: No.

24 THE COURT: What -- what did either Maple or the  
25 was it Maple Leaf or Maple?

1 MR. INDOE: Maple Leaf Mills.

2 THE COURT: Maple Leaf Mills.

3 MR. INDOE: It's a giant flour company in Canada.

4 Neither party operated the vessel directly in that it supplied  
5 its own crew. But they operated the vessel through agents  
6 which is a very typical way of operating a vessel. The  
7 traditional way of operating a vessel.

8 THE COURT: But as a charterer, did it operate it  
9 at all through agents or otherwise? That's why I asked you  
10 before, whether there was any difference between the  
11 charger being a bareboat charter or a time charter. In the  
12 case of a bareboat charter, the owner of the vessel, I  
13 gather, ordinarily has nothing to do with the operation.

14 MR. INDOE: That is correct.

15 THE COURT: To use the language of real estate  
16 which is more congenial to me in this area, the less --

17 MR. INDOE: A lease and a net lease --

18 THE COURT: -- the lessee -- the lessee of the  
19 vessel is the -- in a bareboat charter is the one who  
20 operates it. Is that not so?

21 MR. INDOE: Yes. In real estate parlance a  
22 bareboat charter is a net lease. A time charter is a  
23 lease in real estate parlance. And under a bareboat  
24 charter the only --

25



1 THE COURT: Even -- even -- even in an ordinary  
2 lease, the -- it's the lessee that operates the property  
3 that occupies it, the lessor may have certain obligations  
4 in respect of it, it pays real estate taxes and --

5 MR. INDOE: Well, he supplies the crew to man  
6 to boiler room and sweep the sidewalk and things like that.  
7 But, under a bareboat charter, the vessel is placed in the  
8 hands of charterer and the charterer provides for crews and  
9 may take the vessel anyplace he pleases within the  
10 confines of the charter arrangement of course. Under a  
11 time charter, the charterer tells the owner what he wants  
12 to carry, and from which port to which port he wants to  
13 carry it. But the owner supplies the crew. In our situation,  
14 the owner supplied the crew of the Monarch. It did not  
15 supply the crew by going out and hiring individual deck  
16 hands. It supplied the crew by engaging a vessel manager  
17 who supplied the crew, the deck hands.

18 THE COURT: That vessel manager operated on  
19 behalf of the owner of the vessel and not on behalf of  
20 the --

21 MR. INDOE: Yes, Your Honor.

22 THE COURT: -- lessee so called.

23 MR. INDOE: Yes, Your Honor. That's absolutely  
24 correct.

25 MR. MENILLO: And the owner was Maple Leaf Mills.

1 THE COURT: That's the governments view and the  
2 petitioners view, I take it is that, while Maple Leaf  
3 may have been the legal -- legal owner in a sense that it  
4 had title to the vessel; it had an arrangement with the  
5 petitioner and Bessemer, that the vessel would be operated  
6 as a joint venture between Maple Leaf and on the one  
7 hand and the petitioner and Bessemer on the other hand.

8 MR. INDOE: I think that's --

9 THE COURT: Do I misconceive your position?

10 MR. INDOE: No, that is quite well stated, Your  
11 Honor.

12 THE COURT: Well I'm just groping for orientation  
13 gentlemen, and the -- I take it that the government  
14 challenges the existence of a joint venture?

15 MR. MENILLO: Yes, Your Honor. There's no indi-  
16 cation whatsoever. In so far as the government is concerned  
17 that there was any joint venture involved.

18 THE COURT: Thank you, very much. Either of you  
19 have anything further to tell me at this point.

20 MR. INDOE: No, sir.

21 THE COURT: I can stand all the enlightenment  
22 either of you can give me.

23 MR. INDOE: No -- no Your Honor, I have nothing  
24 to add.

25 MR. MENILLO: I'll attempt to do that on brief



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1 hopefully.

2 THE COURT: Thank you. I'll fix the times for  
3 briefs now. The opening briefs will be due in forty five  
4 days, reply briefs, thirty days thereafter.

5 THE CLERK: Your Honor, opening briefs will be  
6 due December 15th, 1975, and reply briefs will be due  
7 January 12, 1976.

8 (End Tape #6)

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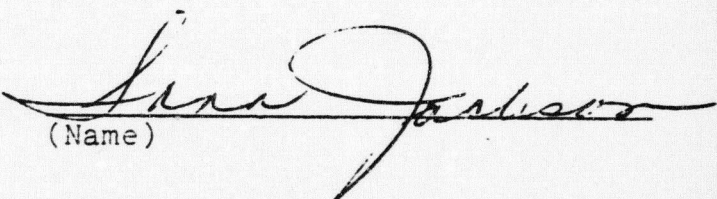
UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 6115-73

Name: Federal Bulk Carriers, Inc.

The foregoing pages, numbers 1 through 28 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Karen Garlick on October 29, 1975 in the United States Tax Court located in New York, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

  
(Name)

November 12, 1975  
(Date)



66 T. C. No. 31

## UNITED STATES TAX COURT

FEDERAL BULK CARRIERS, INC., Petitioner v. COMMISSIONER OF  
INTERNAL REVENUE, Respondent

Docket No. 6115-73.

Filed May 18, 1976.

F Corp. (the taxpayer) and B corp. owned 100 percent of the outstanding securities in X corp. which they sold in 1961 to M corp. under a complicated arrangement (restructured in 1963) which in effect guaranteed a specified projected level of earnings of the only asset of substance (a tanker) indirectly owned by X through a wholly owned subsidiary of X. The earnings of the tanker failed to reach the projected level, and upon final termination of the arrangement in 1965 and 1966, F sustained losses based upon its share of the amount by which the actual earnings of the tanker fell short of the projected earnings. Held, the foregoing arrangement did not constitute a joint venture and F's losses could not be taken as deductions from ordinary income; rather, such losses represented in substance an adjustment to the 1961 sales price and must be treated as capital losses, subject to the statutory limitations in respect of capital losses, within the principles of Arrowsmith v. Commissioner, 344 U.S. 6.

William F. Indoe and Sydney Elliott Unger, for the  
petitioner.

Michael A. Menillo, for the respondent.

SERVED MAY 18 1976

## OPINION

RAUM, Judge: The Commissioner determined deficiencies in petitioner's Federal corporate income tax as follows:

<u>Year</u>	<u>Deficiency</u>
1962	\$ 992.41
1964	1,041.56
1965	3,293.66
1966	31,030.19
1967	15,016.00
1968	53,288.65

The only matter in controversy is whether certain losses petitioner incurred in 1965 and 1966 were capital losses. If they were, then the deductions in respect thereof were subject to the limitation set forth in section 1211, I.R.C. 1954, and moreover, petitioner did not sustain a net operating loss in the year 1965 which could be carried back to the years 1962 through 1964 and carried forward to the years 1966 through 1968. See sections 165(f), 172(c) and 1212. Furthermore, if petitioner is not entitled to a net operating loss deduction in 1966, it does not challenge the Commissioner's determination that, as a personal holding company, it is liable for the special tax on its undistributed personal holding company income as computed by the Commissioner. All of the facts have been stipulated.



Petitioner, Federal Bulk Carriers, Inc., was incorporated under the laws of the State of New York on November 25, 1955. At the time the petition was filed, its principal office was located in New York, New York. Petitioner filed Federal corporate income tax returns for each of the calendar years 1962 through 1968 with the district director of internal revenue, New York, New York.

In 1957 petitioner acquired 60 percent of the outstanding stock of Federal Tankers Limited ("Tankers"), a Canadian corporation, for \$18,837. By September 24, 1959, petitioner also acquired 60 percent of Tankers' subordinated notes for \$1,299,070. The remaining 40 percent interest in the notes and stock of Tankers was acquired by Bessemer Securities Corporation ("Bessemer"), a domestic corporation.

Tankers was organized to build and charter a 41,246 deadweight ton tanker, eventually named the Monarch. Tankers, in turn, organized Federal Petroleum Carriers Limited ("Carriers"), a Canadian corporation, as its wholly owned subsidiary to contract for the building of the Monarch. The Monarch was built by Davie Shipbuilding Limited at its shipyard in Lauzon, P.Q., Canada. Construction of the Monarch qualified under the Canadian Vessel Construction Assistance Act, and pursuant thereto.

the owner of the ship was entitled to certain excess depreciation deductions for Canadian income tax purposes. The Monarch was launched on June 19, 1959, and delivered by the builder on September 24, 1959.

The Monarch was not to be used by either Carriers, Tankers or petitioner for their own account. Instead, nearly a year prior to the ship's launching it was chartered to Imperial Oil Limited ("Imperial"), a Canadian corporation, by means of a somewhat complex chartering arrangement.

On July 15, 1958, the Monarch was bareboat chartered by Carriers to Imperial for a term running until September 24, 1974. Imperial simultaneously bareboat chartered the Monarch to Tankers for the same period. At the same time Tankers time chartered the Monarch to Imperial until September 24, 1974.

The terms of the two bareboat charters were similar. Each set the charter hire at \$1.10 per deadweight ton per month. The charterer obtained the right to "employ the vessel throughout the world in any lawful trade for which she is suitable \* \* \* [except] in clean petroleum trade". The charterer agreed however, to "at its own expense, man, victual, navigate, operate, supply, and fuel the vessel



and repair her as required \* \* \* and pay all other charges and expenses of every kind and nature whatsoever incident to the possession, use, management, employment and operation of the vessel". The charterer was also required to maintain, periodically drydock, and insure the vessel.

The time charter between Tankers and Imperial provided for a charter hire of \$2.70 per deadweight ton per month. However, this charter provided that the "Owner", Tankers, "lets" the vessel equipped in a certain manner and "with full complement of Master, Officers and Crew \* \* \* and due diligence to be exercised to maintain her in such state \* \* \*". Moreover, the "Owner" rather than the charterer "shall provide and pay for all provisions, deck and engine room stores, galley and cabin stores, and insurance on the Vessel; wages of the Master, Officers and Crew; consular fees pertaining to the Master, Officers and Crew; and also \$100.00 per month for galley and crew fuel". The time charter further provided:

8. In the event of loss of time from deficiency of men or stores, breakdown of machinery, interference by Authorities, collision, stranding, fire or other accident or damage to the Vessel, not caused by the fault of the Charterer, preventing the working of the Vessel for more than twenty-four consecutive hours, or in the event of loss of time from breach of orders or neglect of duty by the Master, Officers or Crew, or from deviation for the purpose of landing any injured



or ill person on board other than any who may be carried at Charterer's request, or from strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general, of the Master, Officers or Crew, or from interference with the use of the Vessel hereunder as mentioned in the third paragraph of Clause 55 hereof [relating to foreclosure or other proceedings in connection with the mortgage on the Monarch], payment of hire shall cease for all time lost until the Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when the hire ceased hereunder \* \* \* but should the Vessel be delayed or driven into port or to anchorage by stress of weather or on account of accident to or other consideration for her cargo, such delay, departure, or loss of time shall be for Charterer's account. \* \* \*

The time charter also specified that Imperial need not pay a portion of the hire due each month to the extent of \$1.10 per deadweight ton if that amount was owed by Tankers to it under the second bareboat charter and paid by Imperial to Carriers under the first bareboat charter. Thus, liability for \$1.10 of the total charter hire was governed by the bareboat charters whereas payment of the balance was subject to the different provisions of the time charter. As indicated hereinafter, payments under the charters were assigned as security for a large indebtedness that was incurred in order to pay for the Monarch, and the involved multi-step chartering arrangement may have been required, in part, to obtain such financing.



The final cost of the ship was Can. \$11,236,083. Of this amount \$8,000,000 (U.S.) was loaned to Carriers by institutional lenders. This loan (the "Ship Mortgage Loan") was effectuated by the issuance of notes and bonds by Carriers pursuant to an Indenture of Trust dated September 1, 1959, and various other agreements. The notes and bonds were secured by a mortgage on the Monarch. The amounts payable by Imperial to Tankers and Carriers under the aforementioned bareboat and time charters were assigned to the trustee. In addition, Carriers and Tankers were each required to maintain working capital in the amount of Can. \$150,000, and petitioner and Bessemer guaranteed all of Carriers' obligations under the Indenture of Trust and related agreements.

At no time did Tankers or Carriers have any employees. From the time it was placed in service, the Monarch was managed by Mathiasen's Tanker Industries, Inc. As manager of the ship, it directed the vessel's actual day-to-day operations. Petitioner, however, maintained a daily desk log of the Monarch's operations.

Pursuant to a sales agreement (the "1961 Sales Agreement") dated July 31, 1961, petitioner and Bessemer sold their Tankers stock (30,000 shares) and notes (face value Can. \$2,095,000) to Maple Leaf Mills Limited ("Maple Leaf"),

a Canadian corporation for Can. \$2,325,000. The parties thereto also agreed to a "scheme of reorganization" whereby Maple Leaf was to purchase the Monarch from Carriers (which upon the sale of the Tankers stock to Maple Leaf would become the latter's second-tier subsidiary) for Maple Leaf's non-interest bearing promissory note in the amount of \$11,286,082. Maple Leaf was to assume the obligations of Carriers under the Indenture of Trust and the vessel was to be chartered by Maple Leaf to Imperial under the first bareboat charter, by Imperial to Tankers under the second bareboat charter, and by Tankers to Imperial under the time charter. This arrangement permitted Maple Leaf to deduct depreciation on the vessel and interest under the debt obligations for purposes of the Canadian income tax. The sale by petitioner of its Tankers stock and notes to Maple Leaf constituted a sale of capital assets for Federal income tax purposes.

Simultaneously, with the sale of their interests in Tankers, petitioner and Bessemer formed Bessbulk Limited ("Bessbulk"), a Canadian corporation with an initial capital of Can. \$1,943,000, consisting of a portion of the proceeds of the sale to Maple Leaf. Petitioner owned 60 percent of the shares and approximately



60 percent of the debentures of Bessbulk; the remaining shares and debentures were held by Bessemer. Pursuant to a commitment agreement, dated July 31, 1961, petitioner and Bessemer agreed with Maple Leaf to cause Bessbulk to become party to an indemnity agreement (the "1961 Indemnity Agreement").

The 1961 Indemnity Agreement set forth estimates of revenue that would be derived from and expenses that would be incurred in operating the Monarch over the term (15 years) of the time charter to Imperial. Projected revenue ranged from Can. \$1,257,525 for each of the first five years to Can. \$1,202,850 for each of the final five years. Expenses (including off-hire insurance, for which separate figures were stated, but not including any allowance for depreciation in respect of the Monarch) were projected to increase from Can. \$413,800 in each of the first two years to Can. \$500,000 in each of the final three years. Bessbulk agreed to pay Maple Leaf its annual income to the extent available and necessary to indemnify Maple Leaf in the event the Monarch's actual earnings fell short of projected earnings (the difference between projected revenue and projected expenses). Maple Leaf agreed that at the expiration of the Charter to Imperial, or upon the earlier sale of the



Monarch (events which terminated the indemnity agreement) Bessbulk would receive 35 percent of the amount by which the Monarch's actual earnings exceeded projected earnings.

Under the 1961 Indemnity Agreement Bessbulk was prohibited from issuing additional shares of stock or amending the terms of its outstanding debentures. It could not engage in the active conduct of any business, but could only invest in the "preferred shares or bonds or debentures or other evidences of indebtedness in which the Canadian and British Insurance Companies Act, Part III, states that a company registered under it may invest its funds". The payment of dividends, repurchase of its shares and retirement of its debentures were all restricted.

Pursuant to an agreement with Tankers dated July 31, 1961 (the same date which the sale, commitment and indemnity agreements bore), Bessbulk agreed to "supervise" the manager of the Monarch for a monthly fee of \$2,166, while it at the same time undertook to pay the manager's fee, which appeared to be somewhat less than the fee payable to Bessbulk. At no time, however, did Bessbulk have any employees. Leif Hoegh & Co., Inc., replaced Mathiasen's Tanker Industries, Inc., as manager under an agreement



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dated May 1, 1962. Bessbulk continued to "supervise" the manager. Petitioner continued to maintain its desk log of the Monarch's daily activities.

As of June 20, 1963, petitioner and Bessemer agreed to sell their Bessbulk shares and debentures to Maple Leaf pursuant to a sales agreement (the "1963 Sales Agreement"). The purchase price was to be determined at the earlier of the expiration of the charter of the Monarch to Imperial or the sale of the Monarch by Maple Leaf. The purchase price was to be based upon, among other things, the net worth of Bessbulk and the operating experience of the Monarch. The agreement incorporated the same revenue and expense projections set forth in the 1961 Indemnity Agreement. For any year in which the operations of the Monarch produced a loss, the amount of the loss plus the projected earnings for that year was defined as a "net revenue decrease". If operations produced earnings which, however, were less than projected earnings, the difference was also a "net revenue decrease". But actual earnings in excess of projected earnings produced a "net revenue increase" in the amount of the excess. The agreement provided for the periodic distribution to Maple Leaf of Bessbulk's net income to the extent necessary



to compensate Maple Leaf for any "net revenue decreases" which had not been otherwise offset by "net revenue increases".

Upon termination of the time charter to Imperial or sale of the Monarch by Maple Leaf to someone unrelated to it, the agreement required computation of a "charter period deduction" defined as the amount, if any, by which aggregate "net revenue decreases" exceeded aggregate "net revenue increases" and distributions of Bessbulk income to Maple Leaf. The excess of the net worth of Bessbulk over the charter period deduction would constitute the "basic purchase price"<sup>1</sup> of the Bessbulk shares and debentures, 60 percent of which would be payable to petitioner. This purchase price was subject to adjustments, however, whereby Maple Leaf would be required to pay additional amounts out of profits earned in operating the Monarch after expiration of the Imperial charter or gain earned upon the sale of the vessel. In no event, however, could the total adjustment exceed the sum of

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1.

In the event that the net worth of Bessbulk should be less than the charter period deduction, the basic purchase price was fixed at \$1.



the charter period deduction and amounts of Bessbulk income previously distributed to Maple Leaf.

Pursuant to other agreements also executed on June 20, 1963, petitioner replaced Bessbulk as "supervisor" of the Monarch's manager. By an agreement dated June 1, 1964, petitioner succeeded Leif Hoegh & Co., Inc., as manager of the Monarch. Its annual compensation for such services was set at \$20,000. Petitioner continued to maintain its desk log of the daily operations of the Monarch until November 19, 1965. It was on that date that the Monarch was sold by Maple Leaf to Oswego Unity Corporation, an unrelated third party.

Pursuant to an agreement dated November 18, 1965, petitioner, Bessemer and Maple Leaf terminated the 1963 Sales Agreement. This latest agreement incorporated the same basic formula for determining the purchase price of the Bessbulk shares and debentures adopted in the 1963 Sales Agreement which in turn had been based upon the 1961 Indemnity Agreement.

During the period from July 31, 1961, through November 18, 1965, actual earnings from the Monarch consistently fell short of the earnings projected in the 1961 Indemnity Agreement. At the time the November 18, 1965, agreement was executed the amount by which the cumulative deficit



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in actual earnings exceeded Bessbulk's income for that period was estimated. Sixty percent of that amount -- the portion which would reduce the price paid for petitioner's Bessbulk shares and debentures -- was \$501,684.52. Moreover, gain had been realized on the liquidation of a portion of Bessbulk's assets which had been held for more than six months. Sixty percent of this gain amounted to \$100,907.59. On the basis of these computations and the provisions of the November 18, 1965, agreement Maple Leaf paid petitioner Can. \$768,553 for its Bessbulk shares and debentures. This price was subject to adjustment after final audit of profit or loss from the Monarch's operations for the period ending November 19, 1965. A final audit determined that the difference between projected and actual earnings was greater than previously estimated. Sixty percent of the additional earnings deficiency totaled \$48,011.81.

In 1966 additional gain was realized in connection with the contribution to and sale of a deposit required under the Canadian Vessel Construction Assistance Act to avoid recapture of excess depreciation claimed by Maple Leaf in respect of the Monarch. Petitioner was required under the November 18, 1965, agreement to contribute to



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this deposit, and its 60 percent share of the resulting gain was \$25,771.32. Accordingly, in 1966, petitioner paid Maple Leaf the net amount of \$22,240.49.

On its Federal corporate income tax return for 1965 petitioner claimed a deduction in the amount of \$400,776.93 (\$501,684.52 minus \$100,907.59) for "Loss by indemnification to Maple Leaf Mills Limited for guarantee of ship operation income pursuant to agreements". On that return petitioner reported gross income of \$25,407.89 and claimed deductions totaling \$411,171.16. As a result petitioner filed refund claims for each of the years 1962, 1963 and 1964, on which it claimed net operating loss carryback deductions. It received tentative allowances of \$992.41, \$2,276.15 and \$3,988.16 for those years, respectively.

On its return for the year 1966 petitioner deducted \$22,240.49 described as "Indemnification for guarantee of ship operation income pursuant to agreements". It also claimed a net operating loss deduction in the amount of \$356,382.54. On its returns for the years 1967 and 1968, petitioner claimed net operating loss deductions of \$337,491.25 and \$292,666.24, respectively.



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In his deficiency notice the Commissioner determined that "loss by indemnification" deductions claimed in the amounts of \$400,776.93 and \$22,240.49 for the taxable years ended December 31, 1965 and December 31, 1966, respectively, do not constitute ordinary loss deductions.

The Commissioner also disallowed the net operating loss deductions for the years 1962 through 1964 and 1966 through 1968 (which were based on carrybacks and carry forwards of the foregoing claimed "loss[es] by indemnification"), and determined that for the year 1966 petitioner was a personal holding company subject to the special tax on undistributed personal holding company income.<sup>2</sup>

The issue before us is whether losses sustained by petitioner in 1965 and 1966 were capital losses. We begin with the fact that these losses were incurred on the sale of petitioner's Bessbulk stock and debentures to Maple Leaf pursuant to the 1963 Sales Agreement and the agreement dated November 18, 1965. Ordinarily, such property would be a capital asset in the taxpayer's hands and any loss incurred on its sale would be a capital loss. Sections 1221, 1222(2) and (4).

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2. No deficiency was determined for the year 1963 as the Commissioner also determined that for the year 1963 petitioner was entitled to carry back an investment credit from the year 1966.



Petitioner does not contend that the stock and debentures were not capital assets, but rather, takes the position that the form of the transaction which produced those losses should be disregarded. It asserts that the various Bessbulk-related transactions, when viewed as a whole, reveal the existence of a joint venture between itself, Bessemer and Maple Leaf to share the profits and losses arising from the operation of the Monarch. In its view, Bessbulk was merely a device used to secure the performance by itself and Bessemer of their obligations as participants in the joint venture. Therefore, it argues, the losses here in issue were sustained by it as a participant in a joint venture and are deductible as business expenses, under section 162(a), or as losses for which it has not been compensated, under section 165(a).<sup>3</sup>

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3. Petitioner also contends that the losses were not properly reflected on its returns for 1965 and 1966. It contends that in 1965 it should have reported a capital gain in the amount of \$100,907.59, arising from the liquidation of a portion of Bessbulk's assets, and a loss from the purported joint venture in the amount of \$501,684.52, rather than a net loss of \$400,776.93. As for 1966, petitioner claims that it realized a capital gain on the sale of the deposit required under the Canadian Vessel Construction Assistance Act in the amount of \$25,771.32 and an ordinary loss arising from the joint venture in the amount of \$48,011.81, rather than the net loss in the amount of \$22,240.49 as shown on its return. Our disposition of the principal issue in this case makes it unnecessary for us to consider these contentions.



Respondent does not reply to these contentions by insisting that the losses in dispute be viewed merely as losses from the sale of the Bessbulk stock and debentures. On the contrary, he also seems to urge that their character be determined by the substance of the Bessbulk-related transactions viewed as a whole; however, his view of the substance of those transactions is far different from that of petitioner. Respondent contends that in connection with the sale of the Tankers stock and debentures to Maple Leaf, petitioner and Bessemer agreed to guaranty that the Monarch -- the principal asset held by Tankers through its subsidiary Carriers -- would produce specified levels of earnings. This guaranty was, in turn, secured by setting aside a portion (Can. \$1,943,000 out of Can. \$2,325,000) of the proceeds from the sale of the Tankers stock and debentures. Amounts eventually paid in satisfaction of the guaranty were in effect adjustments to the purchase price of the Tankers stock and debentures. Therefore, respondent asserts, relying on Arrowsmith v. Commissioner, 344 U.S. 6, and related cases, the character of the losses so incurred must be determined by reference to the character of the gain on the original sale of Tankers stock and debentures. Accordingly, those losses must be deemed capital losses. We agree with respondent.



The relationship that existed between petitioner, Bessemer, Maple Leaf and Bessbulk possessed few, if any, of the indicia of a joint venture. Ray S. Robinson, 44 T.C. 20, 34-35; Hubert M. Luna, 42 T.C. 1067, 1077-1078; Beck Chemical Equipment Corp., 27 T.C. 840, 848-849. None of the several contracts upon which that relationship was bottomed purport to establish a joint venture as such. To be sure, this consideration may not be controlling, but it is a matter of some significance in the light of the fact that the contracts reflect a high degree of sophistication and careful draftsmanship and were obviously prepared by experienced lawyers. Moreover, although the common objective shared by participants in the supposed joint venture was the profitable operation of the Monarch, neither Bessemer nor petitioner contributed capital to that enterprise. As petitioner itself points out, the contributions to Bessbulk served primarily as security for the obligation to reimburse Maple Leaf for deficiencies in the Monarch's earnings. Nor is there any evidence that the Monarch was operated in a manner which represented to others that petitioner, Bessemer and Maple Leaf were joint venturers. And to the extent that petitioner or Bessemer had control over the operations of the



Monarch (outright or through Bessbulk), it appears to have been as a consequence of entirely separate contractual undertakings pursuant to which they were employed to manage the ship or to supervise the ship's manager. Above all, however, it is the absence of the central feature of a joint venture -- a proprietary interest in the net profits of the enterprise coupled with an obligation to share its losses -- which leads us to conclude that a joint venture did not exist.

To be sure, the terms of the 1961 Indemnity Agreement provided that if the aggregate profits of the Monarch over the term of the agreement exceeded a specified level petitioner and Bessemer would be entitled to 35 percent of the excess. However, the maximum revenue of the Monarch was limited by the terms of the charters to Imperial. Thus, for actual earnings to exceed projected earnings the expenses of operating the Monarch would have to prove less than projected, a prospect hardly shown to have been likely, or realistically anticipated, on this record. But whether that prospect was real or illusory, it was in any event eliminated by the 1963 Sales Agreement, which restructured the entire arrangement. According to provisions in that agreement the price Maple Leaf was required



eventually to pay for the Bessbulk stock and debentures could not exceed the net worth of Bessbulk's assets plus the amount of the earnings thereon previously distributed to Maple Leaf. Thus, any amounts received by petitioner in excess of its contributions to Bessbulk would be limited to the appreciation in value of the preferred shares, bonds and the like in which those funds were required to be invested and the earnings thereon. On the other hand, the amount of such contributions which petitioner would eventually recoup was at all times subject to being reduced by its share of the amounts needed to compensate Maple Leaf dollar-for-dollar for the aggregate amount by which the Monarch's earnings over the duration of the agreed period fell short of projected earnings. Such an arrangement is hardly indicative of a joint venture. Compare S. & M. Plumbing Co., 55 T.C. 702.

The precise objectives which petitioner, Bessemer and Maple Leaf sought to attain through this maze of agreements are not clearly disclosed in the record. Indeed, this is but one of several respects in which the record, although replete with lengthy, highly complex documents, is disturbingly vague. Compelled as we are

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to distill the substance of these transactions from bare contracts, we find respondent's characterization thereof as an agreement to adjust the purchase price of the Tankers stock and debentures more persuasive than that put forward by petitioner.

Petitioner and Bessemer sold all of their Tankers stock and debentures to Maple Leaf for Can. \$2,325,000. Contemporaneously, and it may reasonably be inferred as a condition of that sale, they agreed to guaranty that over a given period the Monarch -- the principal asset held by Tankers and its wholly-owned subsidiary, Carriers -- would produce specified earnings for Maple Leaf. It was in the ultimate settlement of this obligation that the losses whose character is here in dispute were incurred. These losses were thus so intimately tied to the Tankers sale that their character must be ascertained by reference to the original transaction -- the sale of the Tankers stock and debentures. Arrowsmith v. Commissioner, 344 U.S. 6; Duveen Brothers, Inc., 17 T.C. 124, affirmed per curiam 197 F. 2d 118 (C.A. 2); certiorari denied 344 U.S. 884; Kimbell v. United States, 490 F. 2d 203 (C.A. 5); Estate of James M. Shannonhouse, 21 T.C. 422; Rees Blow Pipe Manufacturing Co., 41 T.C. 598, affirmed per curiam 342 F. 2d 990 (C.A. 9); John E. Turco, 52 T.C. 631. This conclusion is buttressed by the fact that the petitioner and Bessemer were required to set aside the bulk of the



proceeds they received from that sale, and it was out of these funds that their obligations under the guaranty were to be satisfied. Accordingly, since the sale of the Tankers stock and debentures was a sale of capital assets, the losses incurred by petitioner in 1965 and 1966 were capital losses.<sup>4</sup>

Decision will be entered  
for the respondent.

4. As additional support for its position petitioner relies on the decision of the Federal Court of Canada in Maple Leaf Mills Ltd. v. Minister of National Revenue, 72 Dom. Tax Cas. 6166, in which it was determined that Maple Leaf received income for Canadian income tax purposes upon the purchase of the Bessbulk stock and debentures for less than their fair market value. We have reviewed that decision and find nothing therein which persuades us to reach a different result here. Aside from the obvious fact that that decision involved Canadian income tax principles, which may differ from U.S. principles in important respects, it should be noted that Maple Leaf's position in the various Bessbulk-related transactions was far different from that of petitioner. Although a transaction involving a payment by one taxpayer and corresponding receipt by another may often -- and indeed, ordinarily -- have complementary tax consequences to both, this need not always be so. For it is quite possible that the same transaction may be subject to quite different analyses depending upon whether it is viewed from the point of view of the payor or that of the recipient. (For example, fees received for rendering services constitute ordinary income in the hands of the recipient; whereas the payment of those fees might be nondeductible either because it represents a personal expenditure, United States v. Gilmore, 372 U.S. 39, or a capital outlay, Woodward v. Commissioner, 397 U.S. 572. Similarly, a payment by one person may be business related from his point of view and therefore deductible by him, while it might at the same time represent a receipt that does not constitute taxable income to the payee. Compare Bank of Palm Beach & Trust Co. v. Commissioner, 476 F. 2d 1343 (Ct. Cl.) with Estate of Carter v. Commissioner, 453 F. 2d 61 (C.A. 2).) In this case, payment by petitioner merely served as a reduction of the purchase price that it received for the Tankers stock and debentures, while from Maple Leaf's point of view it could readily be treated by the Canadian court as the receipt of income either from a bargain purchase of securities or from the operation of the Monarch.



UNITED STATES TAX COURT  
WASHINGTON, D.C. 20217

0000034

~~FEDERAL BULK CARRIERS, INC.~~  
Petitioner,

v.

Docket No. 6115-73

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth  
in its Opinion filed May 18, 1976, it is

ORDERED and DECIDED: That there are deficiencies in  
petitioner's Federal corporate income tax as follows:

<u>Year</u>	<u>Deficiency</u>
1962	\$ 992.41
1964	1,041.56
1965	3,293.66
1966	31,030.19
1967	15,016.00
1968	53,288.65

(Signed) ARNOLD RAUM

Judge

ENTERED MAY 18 1976  
Director

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June 24, 1976

UNITED STATES TAX COURT  
Washington, D.C.

Federal Bulk Carriers, Inc.,  
Petitioner

v.

Docket No. 6115-73

Commissioner of Internal Revenue,  
Respondent

NOTICE OF APPEAL

Notice is hereby given that Federal Bulk Carriers, Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the decision of this court entered in the above captioned proceeding on the 18th day of May, 1976, relating to deficiencies in the corporate income tax of Federal Bulk Carriers, Inc. for the years (and in the amounts) 1962 (\$992.41), 1964 (\$1,041.56), 1965 (\$3,293.66), 1966 (\$31,030.19), 1967 (\$15,016.00) and 1968 (\$53,288.65).

/s/ S.E.U.

Sydney E. Unger  
Attorney for Petitioner  
48 Wall Street  
New York, N.Y. 10005  
(212) 952-8134

Sullivan & Cromwell  
Of Counsel

AGREEMENT made as of the 31st day of July, 1961,

B E T W E E N:

FEDERAL BULK CARRIERS, INC., a corporation organized under the laws of the State of New York and having its principal office at the City of New York in the said State (hereinafter sometimes called "Federal Bulk") and BESSEMER SECURITIES CORPORATION, a corporation organized under the laws of the State of Delaware and having its principal office at the said City of New York,

hereinafter collectively called the "Vendors"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province,

hereinafter called the "Purchaser"

OF THE SECOND PART.

WHEREAS in and for the purposes of this agreement:

- (a) "Tankers" means Federal Tankers Limited a company incorporated under the laws of Canada;
- (b) "Carriers" means Federal Petroleum Carriers Limited, a company incorporated under the laws of Canada and the wholly owned subsidiary of Tankers;
- (c) "vessel" means S.T. FEDERAL MONARCH, a steam driven oil tank vessel owned by Carriers;
- (d) "Indenture" means the Indenture of Trust dated as of September 1, 1959 made by Carriers to and in favour of Chemical Bank New York Trust Company as Trustee, providing for the issue and securing of Bonds and Notes of Carriers in an initial aggregate principal amount of \$8,000,000 in lawful money of the United States of America;
- (e) "First Mortgage Bonds" means the Bonds and Notes of Carriers presently outstanding under and secured by and pursuant to the Indenture;
- (f) "Tanker shares" means the 30,000 issued and

DKT NO.

6115-73

EXH.

34-HH



presently outstanding shares without nominal or par value of the capital stock of Tankers;

- (g) "Subordinated Notes" means the outstanding 6% Subordinated Notes of Tankers in the principal amount of <sup>2,075,000</sup>~~\$2,070,000~~ (Canadian); (See 12)
- (h) "Imperial" means Imperial Oil Limited, a company incorporated under the laws of Canada;
- (i) "first charter" means the bareboat charter of the vessel from Carriers to Imperial dated as of July 15, 1958;
- (j) "sub9charter" means the bareboat charter of the vessel from Imperial to Tankers dated as of July 15, 1958;
- (k) "time charter" means the time charter of the vessel from Tankers to Imperial dated as of July 15, 1958, as the same may be amended as hereinafter contemplated;

AND WHEREAS the Vendors have represented and warranted and do hereby represent and warrant to the Purchaser that the Tanker shares have been validly issued and are outstanding as fully paid and non-assessable shares, are respectively owned by the Vendors free from lien, charge or encumbrance (except that the same have been pledged as collateral security under the Indenture) and are the only issued and outstanding shares of the capital stock of Tankers, and that the Subordinated Notes are respectively owned by the Vendors and represent the only outstanding non-current indebtedness of Tankers;

AND WHEREAS the parties hereto have agreed that the Vendors shall sell and the Purchaser shall purchase all of the Tanker shares and the Subordinated Notes, for the price and upon and subject to the terms and conditions hereinafter set out;

AND WHEREAS the parties hereto have heretofore agreed upon a scheme of reorganization whereby following the said sale and purchase of the Tanker shares and the Subordinated Notes:



- (a) the Purchaser shall become the owner of the vessel;
- (b) Carriers shall be wound up and the Purchaser shall assume all the obligations of Carriers under the Indenture and the First Mortgage Bonds;
- (c) the vessel shall be chartered by the Purchaser to Imperial under the first charter and shall be chartered by Imperial to Tankers under the sub-charter and shall be chartered by Tankers to Imperial under the time charter; and
- (d) the Indenture and the First Mortgage Bonds and all agreements and other writings heretofore executed and delivered in connection with or as collateral to the Indenture and the First Mortgage Bonds shall be amended in the manner heretofore agreed among the parties hereto;

AND WHEREAS Imperial and the holders of the First Mortgage Bonds have indicated to the parties hereto their approval of and consent to the said scheme of reorganization and are currently engaged with the parties hereto in preparing and settling the specific terms and provisions of the indentures, agreements and other writings amending and supplementing the Indenture and the First Mortgage Bonds to give effect to and carry out the said scheme of reorganization;

WITNESSETH as follows, and in consideration of the foregoing and of their mutual covenants and agreements hereinafter set out the parties hereto covenant and agree each with the others as follows:

1. The Vendors hereby sell and the Purchaser hereby purchases all the right, title and interest of the Vendors to and in the Tanker shares and the Subordinated Notes for the price of <sup>2,325,000</sup>  
~~2,325,000~~ in lawful money of Canada. The Vendors hereby acknowledge receipt of the said sum of <sup>2,325,000</sup>  
~~\$2,300,000~~, and the Purchaser hereby acknowledges receipt of duly executed instruments of



transfer assigning, transferring and setting over unto the Purchaser the said right, title and interest of the Vendors to and in the Tanker shares and the Subordinated Notes.

2. Forthwith hereafter and as of the date hereof the Purchaser shall purchase the vessel from Carriers for the price of \$11,236,082 in lawful money of Canada payable by the issue by the Purchaser to Carriers of the Purchaser's non-interest-bearing promissory note in that amount against delivery by Carriers to the Purchaser of a bill of sale of the vessel in registrable form and dated the date hereof; and upon completion of such sale and purchase the business of Carriers shall be deemed to have been carried on since the date hereof for the account and on behalf of the Purchaser.

3. Each of the parties hereto shall do such things and execute and deliver such writings as shall be necessary or desirable on its part in order to carry out and complete with all possible despatch the scheme of reorganization referred to in the fourth recital hereto.

4. Notwithstanding anything hereinbefore contained, the parties hereto agree each with the other that the said sale and purchase of the Tanker shares and the Subordinated Notes and the said sale and purchase of the vessel is and shall be completed in the expectation and upon the understanding that the said scheme of reorganization shall be duly carried out and completed to the Purchaser's satisfaction, and that accordingly:

- (a) pending such carrying out and completion of the said scheme of reorganization the Purchaser shall not encumber, sell or otherwise dispose of any of its right, title or interest to or in the Tanker shares or the Subordinated Notes or the vessel and shall not register the said bill of sale of the vessel; and
- (b) in the event that the said scheme of reorganization be not so carried out and completed by August 31, 1961 the Purchaser shall have the right thereafter

to declare this agreement terminated, whereupon:

- (i) the Purchaser forthwith shall reconvey the vessel to Carriers against cancellation of the promissory note referred to in paragraph 2 hereof and retransfer the Tanker shares and the Subordinated Notes to the Vendors;
- (ii) the Vendors forthwith shall refund to the Purchaser the price paid by the Purchaser pursuant to paragraph 1 hereof;
- (iii) the transactions of sale and purchase hereby effected and provided for shall be null and void and of no effect;
- (iv) the Vendors and Carriers and not the Purchaser shall for all purposes be deemed to have continued from the date hereof as the respective owners of the Tanker shares, the Subordinated Notes and the vessel; and
- (v) none of the parties hereto shall be under any liability to the others of the parties hereto by reason of any matter or thing herein contained.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

FEDERAL BULK CARRIERS, INC.

By: "Ladislav Pathy"  
President

"G. Pathy"  
Secretary

Corporate  
Seal

BESSEMER SECURITIES CORPORATION

By: "Thomas W. Keesee Jr."  
Vice-President

"Richard W. Murrie"  
Secretary

Corporate  
Seal

MAPLE LEAF MILLS LIMITED

By: "J. D. Leitch"  
Chairman

"F.T. Carnegie"  
Secretary

Corporate  
Seal



ATTACH  
to  
Gen. 2/0

July 31, 1961

Maple Leaf Mills Limited  
417 Queen's Quay West  
Toronto, Ontario

Re: S. T. FEDERAL MONARCH

Dear Sirs:

We refer to the agreement between us as Vendors and you as Purchaser and to the agreement between Bessbulk Limited and you, both dated as of this date.

In consideration of your execution and delivery of the former agreement each of us hereby covenants and agrees with you to cause Bessbulk Limited (all the outstanding shares of which are respectively and beneficially owned by us) duly to perform and discharge all its agreements and obligations set out in the latter agreement.

Very truly yours,

FEDERAL BULK CARRIERS, INC.

By [Signature] President

[Signature] Secretary

BESSEMER SECURITIES CORPORATION

By [Signature] VICE PRESIDENT

SECRETARY

35-II (Added to Document File  
10/23)

*Indemnity*

AGREEMENT made as of the 31st day of July, 1961,

*(as revised)*

## B E T W E E N:

BESSBULK LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province,

hereinafter called "Bessbulk"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the said Province of Ontario and having its head office at the said City of Toronto,

hereinafter called "Maple Leaf"

OF THE SECOND PART.

WHEREAS in and for the purposes of this agreement:

- (a) "Tankers" means Federal Tankers Limited, a company incorporated under the laws of Canada;
- (b) "Carriers" means Federal Petroleum Carriers Limited, a company incorporated under the laws of Canada and the wholly owned subsidiary of Tankers;
- (c) "vessel" means S.T. FEDERAL MONARCH, a steam driven oil tank vessel owned by Carriers;
- (d) "Indenture" means the Indenture of Trust dated as of September 1, 1959 made by Carriers to and in favour of Chemical Bank New York Trust Company as Trustee, providing for the issue and securing of Bonds and Notes of Carriers in an initial aggregate principal amount of \$8,000,000 in lawful money of the United States of America;
- (e) "First Mortgage Bonds" means the Bonds and Notes of Carriers from time to time outstanding under and secured by and pursuant to the Indenture;
- (f) "Tanker shares" means the 30,000 issued and presently outstanding shares without nominal

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or par value of the capital stock of Tankers;

- (g) "Subordinated Notes" means the outstanding 6% Subordinated Notes of Tankers in the principal amount of \$2,095,000;
- (h) "Imperial" means Imperial Oil Limited, a company incorporated under the laws of Canada;
- (i) "first charter" means the bareboat charter of the vessel from Carriers to Imperial dated as of July 15, 1958, as the same may from time to time be amended;
- (j) "sub-charter" means the bareboat charter of the vessel from Imperial to Tankers dated as of July 15, 1958, as the same may from time to time be amended;
- (k) "time charter" means the time charter of the vessel from Tankers to Imperial dated as of July 15, 1958, as the same may from time to time be amended;
- (l) "charter period" means the period from the date hereof until the termination of the time charter or until the earlier sale of the vessel by Maple Leaf or any company controlled by Maple Leaf (other than to Maple Leaf or to any company controlled by Maple Leaf);
- (m) "year", except where the context indicates otherwise, means the fiscal year from time to time of Maple Leaf but, if the charter period shall expire during such a fiscal year, means the part of such fiscal year to the time of such expiry;
- (n) "auditors" means the present auditors of Tankers or such other firm of auditors as the parties hereto shall agree to substitute for the said present auditors of Tankers;

(o) "projected earnings" for any year means the excess of:

(i) the net amount which it is estimated will be paid by Imperial during such year as charter hire under the first charter and the time charter, which for each year during the charter period shall for all purposes hereof be the amount set out for such year in Schedule A hereto; over

(ii) the aggregate costs which it is estimated will be incurred in such year, for and in respect of

crew wages and travel  
provisions  
deck and engine stores and supplies  
repairs and maintenance  
surveys (including reserve therefor)  
radio and sundries  
management  
port charges  
off-hire insurance  
P. and I. insurance  
insurance on vessel

and other costs of a similar nature, in the operation of the vessel under the time charter, which for each year during the charter period shall for all purposes hereof be the amount set out for such year in Schedule B hereto;

provided, however, that if such year shall be of less than twelve complete months duration the amounts respectively referred to in clauses (i) and (ii) of this subparagraph (o) shall be appropriately reduced by apportioning the same on a day-to-day basis;

(p) "actual earnings" for any year means the excess of:

(1) the aggregate of the net amounts paid in such year or payable in respect of such



year to Maple Leaf or to Tankers or to the Trustee for the time being for the holders of the outstanding First Mortgage Bonds as charter hire under the first charter and the time charter (after all appropriate deductions for payments made under the sub-charter), or as compensation (including indemnity out of off-hire insurance) for loss of hire under the time charter, or as hire of the vessel pursuant to and in respect of the requisition of the use of the vessel by governmental authority; over (ii) the aggregate costs incurred in such year for and in respect of the categories of expense listed and referred to in clause (ii) of the foregoing subparagraph (o) in the operation of the vessel under the time charter;

- (q) "actual losses" for any year means the excess in such year of the amount referred to in clause (ii) of the foregoing subparagraph (p) over the amount referred to in clause (i) of the said subparagraph (p);
- (r) "net revenue decrease" means, for any year in which there have been actual earnings, the excess of projected earnings for such year over such actual earnings and, for any year in which there have been actual losses, the aggregate of projected earnings for such year and such actual losses;
- (s) "net revenue increase" for any year means the excess of actual earnings in such year over projected earnings for such year;
- (t) "indemnity fund balance" for any year means the net market value of the assets of Bessbulk as at the end of such year, computed in accordance with sound accounting practice but in any event on the basis that:

- (i) Bessbulk's liabilities do not include any indebtedness to Maple Leaf which shall have been incurred by Bessbulk in respect of such year pursuant to paragraph 1 hereof; and
- (ii) Bessbulk's assets do not include any amounts thereafter to be payable by Maple Leaf to Bessbulk pursuant to paragraph 6 or 7 hereof; but in no event shall the indemnity fund balance be greater than \$1,500,000 for the year ending in 1972 or greater than \$1,000,000 for the year ending in 1973;
- (u) "post-charter profits" means the net profits after taxes on income earned by the vessel after the expiry of the charter period, computed in accordance with sound accounting practice but in any event before provision for any payments to Bessbulk pursuant to paragraph 6 hereof and on the assumption that the vessel, regardless of the actual ownership thereof from time to time, is owned by a corporation which has no other business than that of the operation of the vessel and no other assets except the vessel and such other assets as are necessary in connection with the operation of the vessel and, to the extent that the income from such operations is taxable under the Income Tax Act (Canada), that the same is so taxable at the rate set out in paragraph (b) of subsection (1) of Section 39 of the said Act (or any substitute for the said subsection, as such subsection or any such substitute may from time to time be amended);
- (v) "disposition proceeds" means the actual net proceeds received:
  - (i) upon the sale of the vessel;
  - (ii) out of insurance and/or otherwise upon the actual or constructive total loss of the vessel; or



(111) out of insurance and/or by governmental payment and/or otherwise arising out of the seizure or requisition of title to the vessel by any governmental authority;

after deduction in any case of all fees, commissions, costs and expenses of and incidental to any such sale, loss, seizure or requisition and of and incidental to the recovery of any such insurance, governmental payment or other amount;

- (w) the amount from time to time of the indemnity fund balance, the net revenue increase, the net revenue decrease, the post-charter profits, the disposition proceeds, and the sums from time to time payable pursuant to paragraph 2 hereof, shall be determined by the auditors, whose certification thereof shall be final and binding on the parties hereto unless either of such parties shall, within a period of 30 days following delivery to it of such certification, give notice to the other of the parties hereto contesting such certification, in which event the amount in dispute shall be determined by a firm of independent chartered accountants satisfactory to both the parties hereto (whose fees and expenses shall be shared equally between the parties hereto) and the certification of such independent chartered accountants as to the amount in dispute shall be final and binding on the parties hereto; and
- (x) except where specifically otherwise provided, all money amounts are stated in terms of lawful money of Canada;

AND WHEREAS the Tanker shares are the only issued and outstanding shares of the capital stock of Tankers, and the Subordinated Notes represent the only outstanding non-current indebtedness of Tankers, and Maple Leaf has acquired all the



Tanker shares and all the Subordinated Notes;

AND WHEREAS prior to such acquisition by Maple Leaf of the Tanker shares and the Subordinated Notes a scheme of reorganization had been evolved whereby following such acquisition:

- (a) Maple Leaf would become the owner of the vessel;
- (b) Maple Leaf would assume all the obligations of Carriers under the Indenture and the First Mortgage Bonds;
- (c) the vessel would be chartered by Maple Leaf to Imperial under the first charter and would be chartered by Imperial to Tankers under the sub-charter and would be chartered by Tankers to Imperial under the time charter; and
- (d) the Indenture and the First Mortgage Bonds and all agreements and other writings heretofore executed and delivered in connection with or as collateral to the Indenture and the First Mortgage Bonds would be amended in a manner satisfactory to Maple Leaf and the respective parties thereto;

AND WHEREAS as part of the said scheme of reorganization Maple Leaf has acquired the vessel from Carriers;

AND WHEREAS the parties hereto have agreed as hereinafter set out for certain payments to be made from time to time between the parties hereto arising out of the operation of the vessel;

WITNESSETH as follows, and in consideration of the foregoing and of their mutual covenants and agreements hereinafter set out the parties hereto covenant and agree each with the other as follows:

1. From time to time upon a final and binding certification by the auditors that there has been a net revenue decrease for the then immediately preceding year, provided the same be a year within the charter period, Bessbulk shall be and become indebted to Maple Leaf (in respect of such year and in addition to the amount, if any, in which Bessbulk shall be indebted to Maple Leaf under



paragraph 3 hereof in respect of any net revenue decrease or decreases in any year or years prior to such year) in an amount equal to the lesser of:

- (a) the indemnity fund balance as at the end of such year; and
- (b) such net revenue decrease, after deducting therefrom the amount (if any) by which the aggregate of the net revenue increases for all years during the term of this agreement prior to such year shall exceed the aggregate of:
  - (i) all amounts theretofore deducted pursuant to this subparagraph (b); and
  - (ii) all amounts theretofore paid or credited by Maple Leaf to Bessbulk pursuant to paragraph 4 hereof.

2. Whenever Bessbulk shall incur any indebtedness to Maple Leaf in respect of any year as provided in paragraph 1 hereof there shall forthwith be due and payable by Bessbulk to Maple Leaf in respect of such year an amount equal to the lesser of:

- (a) the amount of such indebtedness; and
- (b) an amount equal to the excess of:
  - (i) the aggregate of all income earned and received by Bessbulk (excluding in any event gains resulting from the increase in market value of securities and other capital gains) to the end of such year and of all amounts paid or become due or payable to the end of such year by Maple Leaf to Bessbulk pursuant to paragraph 4 hereof; over
  - (ii) the aggregate of:
    - A. all amounts paid or become due and payable to the end of such year by Bessbulk to Maple Leaf pursuant to this paragraph 2 in respect of any year or years prior to such year;

B. all expenditures made or incurred by Bessbulk between the date hereof and the end of such year to the extent that the same were permitted by the provisions of subparagraph (e) of paragraph 8 hereof; and

C. all dividends and other distributions on Bessbulk's shares, and all interest and repayments of capital on any outstanding income debentures of Bessbulk, paid or made by Bessbulk between the date hereof and the end of such year to the extent that the same were permitted by the provisions of subparagraph (f) of paragraph 8 hereof.

3. All indebtedness to Maple Leaf from time to time incurred by Bessbulk pursuant to paragraph 1 hereof, less from time to time:

- (a) all amounts due and payable to Maple Leaf pursuant to paragraph 2 hereof; and
- (b) all amounts by which such indebtedness shall be reduced pursuant to paragraph 4 hereof;

shall be payable by Bessbulk to Maple Leaf at the expiry of the charter period, together with interest accrued from the respective dates of incurring of such indebtedness (which in the case of indebtedness in respect of any year shall for all purposes of the agreement be the first day of the next following year) to such expiry on the lesser of:

- (i) the outstanding amount from time to time of such indebtedness; and
- (ii) a portion of such outstanding amount equal from time to time to the aggregate of the payments, repayments and other distributions made prior to any such time by Bessbulk in accordance with the provisions of subparagraph (f) of paragraph 8 hereof;

at a rate per annum equal from time to time to the prime rate of



interest charged by Canadian chartered banks on short term corporate borrowings; provided, however, that Bessbulk shall have the right at any time or from time to time to prepay without penalty the whole or any part of such indebtedness and/or interest thereon.

4. From time to time upon a final and binding certification by the auditors that there has been a net revenue increase for the then immediately preceding year there shall become due and be forthwith payable by Maple Leaf to Bessbulk a sum equal to the lesser of:

- (a) the amount of such net revenue increase; and
- (b) the excess of:
  - (i) all indebtedness (whether or not still outstanding, and excluding interest thereon) incurred by Bessbulk to Maple Leaf pursuant to paragraph 1 hereof in any year or years prior to such year; over
  - (ii) the aggregate of the amounts theretofore paid by Maple Leaf to Bessbulk pursuant to this paragraph 4;

and of the sum so due and payable an amount equal to the payments theretofore due or made by Bessbulk to Maple Leaf pursuant to paragraph 2 hereof (and not theretofore repaid by Maple Leaf to Bessbulk pursuant to this paragraph 4) shall be forthwith due and payable by Maple Leaf to Bessbulk and the balance of such sum shall be payable by setting the same off against and reducing accordingly the indebtedness from Bessbulk to Maple Leaf referred to in paragraph 3 hereof.

5. Forthwith after a final and binding certification by the auditors as to the net revenue decrease or net revenue increase for the last year during the charter period:

- (a) if after giving effect to such certification by the auditors there shall be or continue to be any indebtedness owing by Bessbulk to Maple Leaf under paragraph 3 hereof, Bessbulk shall

pay to Maple Leaf the amount of such indebtedness (including interest, if any, thereon);

or

- (b) if after giving effect to such certification there shall be no such indebtedness owing by Bessbulk to Maple Leaf and if the aggregate of the net revenue increases for all years during the charter period shall have exceeded the aggregate of the net revenue decreases for such years, Maple Leaf shall pay to Bessbulk an amount equal to 35% of such excess. ✓

6. If and so long as, after the expiry of the charter period, the vessel shall continue to be owned by Maple Leaf or any company controlled by Maple Leaf, the post-charter profits (which shall be certified by the auditors as at the end of each calendar year while the vessel continues to be so owned and also as at the date when the vessel shall cease to be so owned) shall forthwith from time to time after final and binding certification thereof for each such year or other period be dealt with and applied by Maple Leaf as follows:

- (a) Maple Leaf shall retain out of the post-charter profits an amount (without interest) equal to the excess of:

(i) the aggregate of the net revenue decreases in the years theretofore elapsed during the charter period; over

(ii) the excess of:

A. all indebtedness (whether or not still outstanding, and excluding interest thereon) to Maple Leaf incurred by Bessbulk pursuant to paragraph 1 hereof during or in respect of the charter period; over



B. the aggregate of the amounts theretofore paid or payable by Maple Leaf to Bessbulk pursuant to paragraph 4 hereof;

(b) Out of (and to the extent of) the post-charter profits over and above the amount to be retained by Maple Leaf pursuant to subparagraph (a) of this paragraph 6 Maple Leaf shall from time to time pay to Bessbulk an amount (without interest) equal to the excess of:

(i) all indebtedness (whether or not still outstanding, and excluding interest thereon) to Maple Leaf incurred by Bessbulk pursuant to paragraph 1 hereof during or in respect of the charter period; over

(ii) the aggregate of the amounts theretofore paid or payable by Maple Leaf to Bessbulk pursuant to paragraph 4 hereof.

(c) After the full amount payable to Bessbulk pursuant to subparagraph (b) of this paragraph 6 shall have been paid all the post-charter profits thereafter shall belong to Maple Leaf.

(d) Maple Leaf shall have the right at any time or from time to time to prepay the whole or any part of the amount payable to Bessbulk pursuant to subparagraph (b) of this paragraph 6.

7. In the event that at or after the expiry of the charter period the vessel shall be sold by Maple Leaf or any company controlled by Maple Leaf (other than to Maple Leaf or to any company controlled by Maple Leaf) or shall become an actual or constructive total loss or the title to the vessel shall be seized or requisitioned by any governmental authority, the disposition proceeds shall be applied by Maple Leaf as follows:

(a) Maple Leaf shall retain out of the disposition proceeds the sum of \$1,500,000.

- (b) To the extent that the disposition proceeds shall exceed \$1,500,000, Maple Leaf shall retain out of the disposition proceeds the amount to be retained by Maple Leaf pursuant to subparagraph (a) of paragraph 6 hereof, minus any amounts theretofore retained by Maple Leaf pursuant to the said subparagraph (a) of the said paragraph 6.
- (c) To the extent that any of the disposition proceeds shall remain after application of the provisions of subparagraphs (a) and (b) of this paragraph 7, Maple Leaf shall pay to Bessbulk the amount payable to Bessbulk pursuant to subparagraph (b) of paragraph 6 hereof after deducting from such amount any amounts theretofore paid to Bessbulk pursuant to the said subparagraph (b) of the said paragraph 6.
- (d) Any of the disposition proceeds remaining after application of the provisions of subparagraphs (a), (b) and (c) of this paragraph 7 shall belong to Maple Leaf.

8. Unless Bessbulk shall have the prior written consent of Maple Leaf, then during the period from the date hereof until it shall have paid to Maple Leaf all amounts payable by it to Maple Leaf in respect of the entire charter period under the foregoing provisions of this agreement:

- (a) Bessbulk shall not issue or agree to issue any additional shares of its capital stock or amend or agree to amend any terms or provisions of its outstanding income debentures;
- (b) Bessbulk shall at all times maintain its corporate status and comply with all applicable statutes, laws and governmental and other regulations and requirements;
- (c) Bessbulk shall not make or hold any investments except in any preferred shares or bonds or



debentures or other evidences of indebtedness in which the Canadian and British Insurance Companies Act, Part III, states that a company registered under it may invest its funds or any portion thereof;

(d) Bessbulk shall carry on no business or activity except as set out in the foregoing subparagraph (c);

(e) Bessbulk shall not make or incur any expenditures except for reasonable administrative, corporate and clerical expenses and except for taxes assessed against it;

(f) Bessbulk shall not pay any dividends or make any other distribution on any of its shares, whether by way of purchase, other acquisition for value, redemption, reduction of capital or otherwise, or pay any interest or make any repayment of capital on the outstanding income debentures of Bessbulk, unless:

(i) the indemnity fund balance for the year during which such payment, repayment or other distribution is made (computed as though such year ended immediately after the making of such payment, repayment or other distribution) would be at least \$1,943,100 in the case of a year so ending in 1971 or earlier, at least \$1,500,000 in the case of a year so ending in 1972, and at least \$1,000,000 in the case of a year so ending in 1973; and

(ii) the amount of such payment, repayment or other distribution shall not exceed the amount referred to in subparagraph (b) of paragraph 2 hereof, computed to the end of such year and as though such year ended immediately before the making of such payment or distribution.

9. During the term of this agreement so long as the vessel

continues to be owned by Maple Leaf or by any company controlled by Maple Leaf:

- (a) Bessbulk shall have access at all reasonable times to the records and books of account of Maple Leaf or such controlled company relating to the operation of the vessel and, if Maple Leaf or such controlled company shall have incurred any expenses in such operation which are unreasonable in amount or nature having regard to what is proper and customary for the efficient operation of a vessel of such type in a similar service, Bessbulk shall have the right to require that thereafter such expenses, or such part thereof as is unreasonable in amount, be disregarded in the computation of actual earnings; and if the parties hereto shall disagree as to whether any such expenses are so unreasonable the disagreement shall be referred to and determined by arbitration in the manner set out in subparagraph (d) of this paragraph 9;
- (b) Bessbulk shall have the right, at any time or times when the same shall not cause the vessel to be or continue to be off-hire under the time charter, at Bessbulk's own expense (but so that ownership of the same shall vest in Maple Leaf or such controlled company) to make such improvements to the vessel as in Bessbulk's opinion will result in operating economies, but no such improvement shall be made unless either Maple Leaf shall agree thereto or it shall be determined by arbitration, in the manner set out in subparagraph (d) of this paragraph 9, that the making of such improvements will in no way be disadvantageous to Maple Leaf or such controlled company;



(c) Maple Leaf shall from time to time abide by the decision of Bessbulk as to whether or not to maintain, or to cause such controlled company to maintain, off-hire insurance in respect of the vessel's operations under the time charter, and for periods in respect of which Bessbulk does not require such off-hire insurance to be maintained the premiums that would have been payable therefor, in the amount set out in Schedule C hereto, shall nevertheless continue to comprise part of the operating costs for the purpose of Schedule B hereto; provided, however, that nothing herein contained shall require Maple Leaf or such controlled company to maintain off-hire insurance at an annual cost to it higher than the amount so set out in the said Schedule C or to maintain such insurance when the same is unobtainable by Maple Leaf or such controlled company;

(d) the following shall govern any arbitration pursuant to the provisions of subparagraphs (a) and (b) of this paragraph 9:

Within 20 days after the written request of either party hereto for arbitration, each of the parties hereto shall appoint one arbitrator and the two so appointed shall select a third. In case one of the parties shall fail to name an arbitrator within 20 days after the written request of the other party for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within the said 20 day period, application shall be made within 10 days after the expiration of such 20 day period to any Judge of the Supreme Court of Ontario. The arbitrator or arbitrators so appointed

shall have all the powers accorded arbitrators by The Arbitration Act of Ontario, as amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators shall be final and binding on the parties hereto.

10. During the term of this agreement Maple Leaf shall not sell, or cause or permit any company controlled by it to sell, the vessel (other than to Maple Leaf or to any company controlled by Maple Leaf) for a price lower than the aggregate of:

- (a) \$1,500,000; and
- (b) the amount which would be payable as at the end of the charter period (on the assumption that such sale had been completed) by Bessbulk to Maple Leaf pursuant to subparagraph (a) of paragraph 5 hereof; and
- (c) the excess of the amounts theretofore paid or payable by Bessbulk to Maple Leaf pursuant to paragraph 2 hereof over the amounts theretofore paid or payable by Maple Leaf to Bessbulk pursuant to paragraph 4 hereof;

until Maple Leaf shall have first given to Bessbulk notice of such intended sale:

- (i) identifying the intended purchaser;
- (ii) stating the intended sale price and describing the other terms and conditions of such intended sale; and
- (iii) offering to sell the vessel to Bessbulk for the same price and upon and subject to the same terms and conditions;

and Bessbulk shall have failed to accept such offer within a period of 20 days following the giving of such notice; and in such event Maple Leaf shall be free to sell the vessel, but only to the purchaser, at the price and upon and subject to the other terms and conditions set out in the said notice.



11. So long as the agreement dated as of this date made between Tankers and Bessbulk, relating to the supervision and direction of the activities of Mathiasen's Tanker Industries, Inc. as manager of the vessel, shall remain in full force and effect:

- (a) the costs referred to in clause (ii) of subparagraph (o) of the first recital hereto shall not include the excess in any year of the amounts paid by Tankers to Bessbulk under paragraph 3 of the said agreement over the amounts paid by Bessbulk to the said manager under subparagraph (c) of paragraph 1 of the said agreement; and
- (b) notwithstanding subparagraphs (d) and (e) of paragraph 8 hereof, Bessbulk shall have the right to carry on the activities and to make the expenditures referred to and contemplated by the said agreement.

12. The term of this agreement shall be the period from the date hereof until all payments required to be made by either of the parties hereto to the other of the said parties hereunder shall have been made.

13. Any notice to be given hereunder to either of the parties hereto shall be deemed to be sufficiently given if reduced to writing and mailed by prepaid registered post to such party at its address hereunder specified, as follows:

Bessbulk	- c/o Arnoldi, Parry, Campbell, Pyle, Godfrey & Lewtas, 80 King Street West, Toronto, Ontario.
Maple Leaf	- 417 Queen's Quay West, Toronto, Ontario.

or to such address as such party may hereafter have designated by notice given in the manner provided in this paragraph to the other of the parties hereto; and any notice given in the manner provided in this paragraph shall be deemed to have been given on the day following the date of mailing the same.

14. This agreement is being executed and delivered in substitution for and accordingly replaces and supersedes an existing agreement between the parties hereto made as of July 31, 1961 and containing terms and provisions substantially similar to those herein contained, which said existing agreement is hereby cancelled and terminated and declared to be null and void and of no force and effect.

15. This agreement shall not be assignable by either of the parties hereto without the consent of the other of such parties; subject thereto this agreement shall enure to the benefit of and bind the parties hereto and their respective successors and assigns.

16. This agreement shall be governed by and construed according to the laws of the Province of Ontario, Canada.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

BESSBULK LIMITED

By:

*Richard W. Morrison*  
PRESIDENT

*Richard W. Morrison*  
~~VICE PRESIDENT~~ SECRETARY

MAPLE LEAF MILLS LIMITED

By:

*E. J. Brown*  
President

*J. H. Brown*  
V. E. C. B. - SECRETARY



SCHEDULE A

to agreement dated as of July 31, 1961  
between Bessbulk Limited and Maple Leaf  
Mills Limited

Estimated Yearly Revenue under First  
Charter and Time Charter during their  
entire terms

<u>Period</u>	<u>Yearly Revenue</u>
First Five Years	\$1,257,525
Second Five Years	1,230,188
Third Five Years	1,202,850

## SCHEDULE B

to agreement dated as of July 31, 1961  
between Bessbulk Limited and Maple Leaf  
Mills Limited

### Estimated Yearly Operating Costs During Entire Term of Time Charter

<u>Period</u>	<u>Yearly Costs</u>
First Two Years	\$396,000
Second Two Years	\$408,000
Third Two Years	\$420,000
Fourth Two Years	\$432,000
Fifth Two Years	\$444,000
Sixth Two Years	\$456,000
Last Three Years	\$468,000

#### NOTES:

- (1) The original financing plan for the vessel contemplated \$5,900,000 principal amount of 15-year 4½% Bonds and \$2,100,000 principal amount of 10-year 5% Bonds. Instead of the latter Bonds the financing in fact included \$840,000 principal amount of 10-year 4½% Bonds and \$1,260,000 principal amount of 6-year 5% Notes, thereby resulting during the first 10 years in a saving of interest from the originally contemplated financing plan. For the purposes of the within agreement this interest saving in e of such years is to be added to the amount set out e for such year.
- (2) The years above referred to are as defined in Clause 54 of the Time Charter. In applying the figures in this Schedule to any "year" as defined in the within agreement, all appropriate adjustments are to be made in order to give effect to the difference between such yearly periods, and for such purpose the yearly costs above set out shall be deemed to accrue on a day to day basis.



SCHEDULE C

to agreement dated as of July 31, 1961  
between Bessbulk Limited and Maple Leaf  
Mills Limited

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Estimated Off-Hire Insurance Premiums  
During Entire Term of Time Charter

<u>Period</u>	<u>Yearly Premium</u>
First Two Years	\$17,800
Second Two Years	17,800
Third Two Years	25,000
Fourth Two Years	25,000
Fifth Two Years	32,000
Sixth Two Years	32,000
Last Three Years	32,000

Contract - 10

7 B.C.

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6 30

April 12, 1962

Maple Leaf Mills Limited  
417 Queen's Quay West  
Toronto, Ontario

Dear Sirs:

Re: S. T. FEDERAL MONARCH

We refer to the agreement dated as of July 31, 1961 between Bessbulk Limited and you, relating to the operations of the above vessel and replacing a previously existing agreement between the same parties and bearing the same date and containing substantially similar provisions.

In consideration of your execution and delivery of such replacement agreement we hereby jointly covenant and agree with you that we shall not permit Bessbulk Limited (all the outstanding shares of which are respectively beneficially owned by us) to default in the performance or observance of any of its agreements or obligations set out in such agreement.

Yours very truly,

FEDERAL BULK CARRIERS, INC.

By: *Kadavath**L. S. Miller*

BEST COPY AVAILABLE

BESSEMER SECURITIES CORPORATION

By: *[Signature]**W. J. Miller*

Copy to IRS auditor - 8/15/68 -

This reconfirms original letter 7/31/61 (item 2b of initial closing documents covering sale of Tankers shares to Maple Leaf) - whereunder Bulk and Bessemer guarantee to cause Bessbulk to faithfully perform all obligations under the Indemnity Agreement.

DKT NO. 6115-73

EXH. 3611

37KK



29  
31  
AGREEMENT made as of the 20th day of June

1963.

B E T W E E N:

FEDERAL BULK CARRIERS, INC., a corporation organized under the laws of the State of New York and having its principal office at the City of New York in the said State (hereinafter sometimes called "Federal Bulk") and BESSEMER SECURITIES CORPORATION, a corporation organized under the laws of the State of Delaware and having its principal office at the said City of New York (hereinafter sometimes called "Bessemer"),

hereinafter sometimes collectively called  
the "Vendors"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province,

hereinafter called "Maple Leaf"

OF THE SECOND PART.

WHEREAS the parties hereto agree that the Vendors hereby sell and Maple Leaf hereby purchases the outstanding shares and income debentures of Bessbulk Limited for the price and upon and subject to the terms and conditions hereinafter set out;

WITNESSETH as follows, and in consideration of the foregoing and of their respective covenants and agreements hereinafter set out the parties hereto covenant and agree each with the others as follows:

Interpretation

1. In and for the purposes of this agreement:
  - (a) "Bessbulk" means Bessbulk Limited, a company incorporated under the laws of the Province of Ontario;
  - (b) "Bessbulk shares" means the 100 issued shares without par value of Bessbulk, of which Federal Bulk is the beneficial owner of 60 shares and Bessemer is the beneficial owner of 40 shares;

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- (c) "Bessbulk debentures" means the 6 $\frac{1}{2}$  Income Debentures due October 1, 1974 of Bessbulk in the aggregate principal amount of \$1,905,233.06 of which Federal Bulk holds \$1,143,339.84 principal amount and Bessemer holds \$761,893.22 principal amount;
- (d) "Tankers" means Federal Tankers Limited, a company incorporated under the laws of Canada and the wholly owned subsidiary of Maple Leaf;
- (e) "Carriers" means Federal Petroleum Carriers Limited, a company incorporated under the laws of Canada and <sup>as of 7/31/61</sup> the wholly owned subsidiary of Tankers; *(as of 8/1/61 - see note)*
- (f) "vessel" means S.T. FEDERAL MONARCH, a steam driven oil tank vessel owned by Maple Leaf;
- (g) "Imperial" means Imperial Oil Limited, a company incorporated under the laws of Canada;
- (h) "first charter" means the bareboat charter of the vessel from Carriers to Imperial dated as of July 15, 1958, as amended and supplemented by Addendum thereto among the said two parties and Maple Leaf dated as of July 31, 1961, and as the same may from time to time be further amended, supplemented or otherwise affected;
- (i) "sub-charter" means the bareboat charter of the vessel from Imperial to Tankers dated as of July 15, 1958, as amended and supplemented by Addendum thereto among the said two parties and Maple Leaf dated as of July 31, 1961, and as the same may from time to time be further amended, supplemented or otherwise affected;
- (j) "time charter" means the time charter of the vessel from Tankers to Imperial dated as of July 15, 1958, as amended and supplemented by Addendum thereto among the said two parties



and Maple Leaf dated as of July 31, 1961, and as the same may from time to time be further amended, supplemented or otherwise affected;

(k) "charter period" means the period from and including August 1, 1961 until the termination of the time charter or until the earlier sale of the vessel by Maple Leaf or any company controlled by Maple Leaf (other than to Maple Leaf or to any company controlled by Maple Leaf);

(l) "year", except where the context indicates otherwise, means the fiscal year from time to time of Maple Leaf but, if the charter period shall expire during such fiscal year, means the part of such fiscal year to the time of such expiry;

(m) "projected earnings" for any year means the excess of:

(i) the net amount which it is estimated will be paid by Imperial during such year as charter hire under the first charter and the time charter, which for each year during the charter period shall for all purposes hereof be the amount set out for such year in Schedule A hereto; over

(ii) the aggregate costs which it is estimated will be incurred in such year, for and in respect of

crew wages and travel  
provisions  
deck and engine stores and supplies  
repairs and maintenance  
surveys (including reserve therefor)  
radio and sundries  
management  
port charges  
off-hire insurance  
P. and I. insurance  
insurance on vessel

and other costs of a similar nature, in the operation of the vessel under the time charter, which for each year during the charter period

shall for all purposes hereof be the amount set out for such year in Schedule B hereto; provided, however, that if such year shall be of less than 12 complete months duration the amounts respectively referred to in clauses (i) and (ii) of this subparagraph (m) shall be appropriately reduced by apportioning the same on a day-to-day basis;

(n) "actual earnings" for any year means the excess of:

(i) the aggregate of the net amounts paid in such year or payable in respect of such year to Maple Leaf or to Tankers (or to any trustee for holders of bonds of Carriers and/or Maple Leaf secured on the vessel) as charter hire under the first charter and the time charter (after all appropriate deductions for payments made under the sub-charter), or as compensation (including indemnity out of off-hire insurance) for loss of hire under the time charter, or as hire of the vessel pursuant to and in respect of the requisition of the use of the vessel by governmental authority; over

(ii) the aggregate costs incurred in such year for and in respect of the categories of expense listed and referred to in clause (ii) of the foregoing subparagraph (m) in the operation of the vessel under the time charter, but excluding from such costs the excess in any year of any amounts paid or payable by Tankers to any corporation or firm other than the manager of the vessel for supervision during such year of the management thereof over the



amounts paid or payable by such corporation or firm to such manager in respect of such year;

- (o) "actual losses" for any year means the excess in such year of the amount referred to in clause (ii) of the foregoing subparagraph (n) over the amount referred to in clause (i) of the said subparagraph (n);
- (p) "net revenue decrease" means, for any year in which there have been actual earnings, the excess of projected earnings for such year over such actual earnings and, for any year in which there have been actual losses, the aggregate of projected earnings for such year and such actual losses;
- (q) "net revenue increase" for any year means the excess of actual earnings in such year over projected earnings for such year;
- (r) "charter period deduction" means the amount, if any, by which the aggregate of the net revenue decreases in the years during the charter period exceeds the aggregate of:
  - (i) the net revenue increases in the years during the charter period; and
  - (ii) the amounts distributed by Bessbulk to Maple Leaf pursuant to paragraph 7 hereof;
- (s) "Bessbulk net worth" means the excess as at the expiry of the charter period of the market value of the assets of Bessbulk over the liabilities of Bessbulk (excluding liabilities for principal and interest on any Bessbulk debentures then outstanding and liabilities to shareholders for capital stock and surplus), computed in accordance with sound accounting practice;
- (t) "basic purchase price" means the greater of:
  - (i) the sum of \$1; and

- (ii) the amount by which the Bessbulk net worth exceeds the charter period deduction;
- (u) "adjusted purchase price" means an amount equal to the basic purchase price plus any addition or additions thereto under paragraphs 5 and 6 hereof;
- (v) "post-charter profits" means the net profits after taxes on income earned by the vessel after the expiry of the charter period so long as the vessel continues to be owned by Maple Leaf or any company controlled by Maple Leaf, computed in accordance with sound accounting practice but in any event before provision for any payments to the Vendors pursuant to paragraph 5 hereof and on the assumption that the vessel, regardless of the actual ownership thereof from time to time, is owned by a corporation which has no other business than that of the operation of the vessel and no other assets except the vessel and such other assets as are necessary in connection with the operation of the vessel and, to the extent that the income from such operations is taxable under the Income Tax Act (Canada), that the same is so taxable at the rate set out in paragraph (b) of subsection (1) of Section 39 of the said Act (or any substitute for the said subsection, as such subsection or any such substitute may from time to time be amended);
- (w) "disposition proceeds" means the actual net proceeds received:
- (i) upon the sale of the vessel;
  - (ii) out of insurance and/or otherwise upon the actual or constructive total loss of the vessel; or
  - (iii) out of insurance and/or by governmental payment and/or otherwise arising out of the



seizure or requisition of title to the vessel  
by any governmental authority;

after deduction in any case of all fees, commissions,  
costs and expenses of and incidental to any such sale,  
loss, seizure or requisition and of and incidental  
to the recovery of any such insurance, governmental  
payment or other amount;

(x) "auditors" means the present auditors of Maple  
Leaf or such other firm of auditors as the parties  
hereto shall agree to substitute for the said present  
auditors of Maple Leaf;

(y) the amount from time to time of the net revenue  
increase, the net revenue decrease, the basic  
purchase price, the adjusted purchase price, the  
post-charter profits, the disposition proceeds,  
and the amounts from time to time distributable  
by Bessbulk pursuant to paragraph 7 hereof, shall  
be determined by the auditors, who shall be in-  
structed by Maple Leaf to proceed with each such  
determination with all reasonable dispatch after  
the expiry of the period or after the event in  
respect of which the same is to be made and whose  
certification thereof shall be final and binding  
on the parties hereto unless any of such parties  
shall, within a period of 30 days following delivery  
to it of such certification, give notice to the  
others of the parties hereto contesting such cer-  
tification, whereupon the amount in dispute shall  
be determined by a firm of independent chartered  
accountants satisfactory to each of the parties  
hereto (whose fees and expenses shall be shared  
equally between the Vendors on the one hand and  
Maple Leaf on the other hand) and the certification  
of such independent chartered accountants as to the

amount in dispute shall be final and binding on the parties hereto; and

- (2) all money amounts are stated in terms of lawful money of Canada, except as otherwise provided, and are payable without interest to the due date of payment thereof.

Sale and Purchase

2. Upon and subject to the terms and conditions hereinafter set out, the Vendors hereby sell and Maple Leaf hereby purchases the Bessbulk shares and the Bessbulk debentures (of which 60 of the Bessbulk shares and \$1,143,339.84 principal amount of the Bessbulk debentures are being so sold by Federal Bulk, and 40 of the Bessbulk shares and \$761,893.22 principal amount of the Bessbulk debentures are being so sold by Bessemer) for a consideration equal to the adjusted purchase price, payable as hereinafter provided.

Effect of Agreement

3. The execution and delivery of this agreement shall operate, without further act or formality, as a transfer to Maple Leaf as at the date hereof of all the Vendors' right, title and interest to and in the Bessbulk shares and the Bessbulk debentures, but the Vendors shall nevertheless forthwith and from time to time hereafter execute and deliver to Maple Leaf all such transfers, assignments and other instruments in writing and further assurances as Maple Leaf or its counsel shall reasonably require from the Vendor to effectuate such sale and transfer.

Payment of Purchase Price

4. Forthwith from time to time after a final and binding certification by the auditors:

- (a) of the basic purchase price, Maple Leaf shall pay the basic purchase price to the Vendors;
- (b) of the post-charter profits for any period, Maple Leaf shall pay to the Vendors any amount then added to the basic purchase price pursuant to paragraph 5 hereof; and



- (c) of the disposition proceeds, Maple Leaf shall pay to the Vendors any amount then added to the basic purchase price pursuant to paragraph 6 hereof;

and each such payment by Maple Leaf shall be made as to 60% thereof to Federal Bulk and as to 40% thereof to Bessemer.

Post-Charter Profits

5. During and in respect of the period after the expiry of the charter period and so long as Maple Leaf or any company controlled by Maple Leaf shall continue to own the vessel, Maple Leaf shall cause the auditors to certify the post-charter profits as at the end of each year and also as at the date when the vessel shall cease to be so owned; and forthwith from time to time after a final and binding certification by the auditors of the post-charter profits there shall be added to the basic purchase price an amount equal to the least of:

- (a) the amount of such post-charter profits;
- (b) the excess of such post-charter profits over any amount by which the charter period deduction shall have exceeded the Bessbulk net worth; and
- (c) the charter period deduction plus the aggregate amount referred to in clause (ii) of subparagraph (r) of paragraph 1 hereof;

minus in each case the aggregate of any amounts which, prior to the date as of which such certification was made, shall have been added to the basic purchase price pursuant to this paragraph 5 and/or paragraph 6 hereof.

Disposition Proceeds

6. In the event that:

- (a) at or after the expiry of the charter period the vessel shall be sold by Maple Leaf or any company controlled by Maple Leaf (other than to Maple Leaf or to any company controlled by Maple Leaf) or shall become an actual or con-

structive total loss or the title to the vessel shall be seized or requisitioned by any governmental authority; and

- (b) the aggregate of the disposition proceeds and the Bessbulk net worth shall have exceeded the aggregate of the charter period deduction and the sum of \$1,500,000;

there shall be added to the basic purchase price an amount equal to the lesser of:

- (i) the excess referred to in subparagraph (b) of this paragraph 6; and
- (ii) the amount by which the charter period deduction plus the aggregate amount referred to in clause (ii) of subparagraph (r) of paragraph 1 hereof shall exceed the aggregate of any amounts which, prior to such sale, shall have been added to the basic purchase price pursuant to paragraph 5 hereof.

Distributions by Bessbulk

7. In the event that, as evidenced by a final and binding certificate of the auditors as at the end of any year, the aggregate of all income earned and received by Bessbulk (excluding in any event gains resulting from the increase in market value of securities and other capital gains) prior to the end of such year shall exceed the aggregate of:

- (a) all expenditures made or incurred by Bessbulk prior to the end of such year; and
- (b) all amounts distributed by Bessbulk to Maple Leaf prior to the end of such year;

then Maple Leaf may cause Bessbulk to distribute to Maple Leaf an amount equal to the lesser of:

- (i) such excess; and
- (ii) the amount that the charter period deduction would have been if the charter period had expired at the end of such year.



and any such distribution may be by way of dividend or any other distribution on the Bessbulk shares or any other shares of Bessbulk (including distributions by way of purchase, other acquisition for value, redemption, reduction of capital or otherwise) or by way of interest or repayment of capital on the Bessbulk debentures or any other indebtedness of Bessbulk.

Restrictions on Bessbulk

8. Maple Leaf covenants to and with the Vendors and each of them that (unless Maple Leaf shall have the prior written consent of the Vendors) during the term of this agreement:

- (a) Bessbulk shall not issue or agree to issue any additional shares of its capital stock or amend or agree to amend any terms or provisions of the outstanding Bessbulk debentures;
- (b) Bessbulk shall at all times maintain its corporate status and comply with all applicable statutes, laws and governmental and other regulations and requirements;
- (c) Bessbulk shall carry on no business or activity except the investment and reinvestment from time to time of its funds;
- (d) Bessbulk shall not make or incur any expenditures except for reasonable administrative, corporate and clerical expenses and except for taxes assessed against it; and
- (e) Bessbulk shall not pay any dividends or make any other distribution on any of its shares, whether by way of purchase, other acquisition for value, redemption, reduction of capital or otherwise, or pay any interest or make any repayment of capital on the outstanding income debentures of Bessbulk, except as permitted by paragraph 7 hereof.

Representations and Warranties by Vendors

9. The Vendors jointly and severally represent and warrant

to Maple Leaf:

- (a) that the Bessbulk shares have been regularly and validly issued and are outstanding as fully paid shares, and are the only shares of Bessbulk heretofore issued or either absolutely or contingently agreed to be issued by Bessbulk;
- (b) that the Bessbulk debentures are the only funded indebtedness of Bessbulk and have been regularly and validly issued for full consideration by Bessbulk;
- (c) that the Bessbulk shares and the Bessbulk debentures are respectively beneficially owned by the Vendors free from lien, charge or encumbrance;
- (d) that the balance sheet of Bessbulk as at July 31, 1962, prepared by Price Waterhouse & Co., a copy of which has been delivered to Maple Leaf concurrently with the execution and delivery of this agreement, is true and correct and accurately reflects the financial position of Bessbulk as at that date, and that Bessbulk has not incurred any liabilities since that date except in the ordinary course of business; and
- (e) that the market value of Bessbulk's assets as at the close of business on the last business day preceding the date hereof is at least \$1,970,000.

Covenants Affecting Vessel

10. During the term of this agreement so long as the vessel continues to be owned by Maple Leaf or by any company controlled by Maple Leaf:

- (a) the Vendors shall have access at all reasonable times to the records and books of account of Maple Leaf or such controlled company relating to the operation of the vessel and, if Maple Leaf or such controlled company shall have



incurred any expenses in such operation which are unreasonable in amount or nature having regard to what is proper and customary for the efficient operation of a vessel of such type in a similar service, the Vendors shall have the right to require that thereafter such expenses, or such part thereof as is unreasonable in amount, be disregarded in the computation of actual earnings; and if the parties hereto shall disagree as to whether any such expenses are so unreasonable the disagreement shall be referred to and determined by arbitration in the manner set out in subparagraph (d) of this paragraph 10;

- (b) the Vendors shall have the right, at any time or times when the same shall not cause the vessel to be or continue to be off-hire under the time charter, at the Vendors' own expense (but so that ownership of the same shall vest in Maple Leaf or such controlled company) to make such improvements to the vessel as in the Vendors' joint opinion will result in operating economies, but no such improvement shall be made unless either Maple Leaf shall agree thereto or it shall be determined by arbitration, in the manner set out in subparagraph (d) of this paragraph 10, that the making of such improvements will in no way be disadvantageous to Maple Leaf or such controlled company;
- (c) Maple Leaf shall from time to time abide by the joint decision of the Vendors as to whether or not to maintain, or to cause such controlled company to maintain, off-hire insurance in respect of the vessel's operations under the time charter, and for periods in respect of which the Vendors do not require such off-hire insurance to be maintained

the premiums that would have been payable therefor, in the amount set out in Schedule C hereto, shall nevertheless continue to comprise part of the operating costs for the purpose of Schedule B hereto; provided, however, that nothing herein contained shall require Maple Leaf or such controlled company to maintain off-hire insurance at an annual cost to it higher than the amount so set out in the said Schedule C or to maintain such insurance when the same is unobtainable by Maple Leaf or such controlled company;

- (d) the following shall govern any arbitration pursuant to the provisions of subparagraphs (a) and (b) of this paragraph 10:

Within 20 days after the written request of any party hereto for arbitration, the Vendors shall jointly appoint one arbitrator, Maple Leaf shall appoint one arbitrator, and the two arbitrators so appointed shall select a third. In case the Vendors or Maple Leaf shall fail so to name an arbitrator within 20 days after the written request of the other party for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within the said 20 day period, application shall be made within 10 days after the expiration of such 20 day period to any Judge of the Supreme Court of Ontario. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by The Arbitration Act of Ontario, as amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators shall be final and binding on the parties hereto.

Sale of Vessel

11. During the term of this agreement Maple Leaf shall not sell, or cause or permit any company controlled by it to sell, the



vessel (other than to Maple Leaf or to any company controlled by Maple Leaf) for a price lower than the amount by which:

- (a) the aggregate of \$1,500,000, the charter period deduction and the aggregate amount referred to in clause (ii) of subparagraph (r) of paragraph 1 hereof; exceeds
- (b) the aggregate amounts theretofore added to the basic purchase price pursuant to paragraph 5 hereof; until Maple Leaf shall have first given to the Vendors notice of such intended sale:

- (i) identifying the intended purchaser;
- (ii) stating the intended sale price and describing the other terms and conditions of such intended sale; and
- (iii) offering to sell the vessel to the Vendors for the same price and upon and subject to the same terms and conditions;

and the Vendors shall have failed to accept such offer within a period of 20 days following the giving of such notice; and in such event Maple Leaf shall be free to sell the vessel, but only to the purchaser, at the price and upon and subject to the other terms and conditions set out in the said notice.

Term of Agreement

12. The term of this agreement shall be the period from the date hereof until Maple Leaf shall have paid the entire adjusted purchase price to the Vendors.

Notices

13. Any notice to be given hereunder to any of the parties hereto shall be deemed to be sufficiently given if reduced to writing and mailed by prepaid registered post to such party at its address hereunder specified, as follows:

Federal Bulk	-	Lincoln Building, 60 East 42nd Street, New York, N.Y.; U.S.A.
Bessemer	-	800 Second Avenue, New York 17, N.Y., U.S.A.

Maple Leaf - 417 Queen's Quay West,  
Toronto, Ontario,

or to such address as such party may hereafter have designated by notice given in the manner provided in this paragraph to other parties hereto; and any notice given in the manner provided in this paragraph shall be deemed to have been given on the day following the date of mailing the same.

Assignment

14. This agreement shall not be assignable by any of the parties hereto without the consent of the others of such parties; subject thereto this agreement shall enure to the benefit of and bind the parties hereto and their respective successors and assigns.

Execution in Counterparts

15. This agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall be and constitute but one and the same instrument.

Governing Law

16. This agreement shall be governed by and construed according to the laws of the Province of Ontario, Canada.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

FEDERAL BULK CARRIERS, INC.

By: [Signature]  
V.P.

[Signature]  
ASST. SECRETARY

BESSEMER SECURITIES CORPORATION

By: [Signature]  
PRESIDENT

[Signature]  
SECRETARY

MAPLE LEAF MILLS LIMITED

By: [Signature]  
[Signature]



SCHEDULE A

Estimated Yearly Revenue under First  
Charter and Time Charter during their  
entire terms

<u>Period</u>	<u>Yearly Revenue</u>
First Five Years	\$1,257,525
Second Five Years	1,230,188
Third Five Years	1,202,850

NOTE: The years above referred to are as defined in Clause 54 of the Time Charter. In applying the figures in this Schedule to any "year" as defined in the within agreement, all appropriate adjustments are to be made in order to give effect to the difference between such yearly periods, and for such purpose the yearly revenue above set out shall be deemed to accrue on a day to day basis.

# SCHEDULE B

## Estimated Yearly Operating Costs During Entire Term of Time Charter

<u>Period</u>	<u>Yearly Costs</u>
First Two Years	\$396,000
Second Two Years	\$408,000
Third Two Years	\$420,000
Fourth Two Years	\$432,000
Fifth Two Years	\$444,000
Sixth Two Years	\$456,000
Last Three Years	\$468,000

### NOTES:

- (1) The original financing plan for the vessel contemplated \$5,900,000 principal amount of 15-year 4½% Bonds and \$2,100,000 principal amount of 10-year 5% Bonds. Instead of the latter Bonds the financing in fact included \$840,000 principal amount of 10-year 4½% Bonds and \$1,260,000 principal amount of 6-year 5% Notes, thereby resulting during the first 10 years in a saving of interest from the originally contemplated financing plan. For the purposes of the within agreement this interest saving in each of such years is to be added to the amount set out above for such year.
- (2) The years above referred to are as defined in Clause 54 of the Time Charter. In applying the figures in this Schedule to any "year" as defined in the within agreement, all appropriate adjustments are to be made in order to give effect to the difference between such yearly periods, and for such purpose the yearly costs above set out shall be deemed to accrue on a day to day basis.

*For  
Schedule "B"*

*As Adjusted  
for Notes (1) & (2) -*

*See Table prepared & filed  
per H&H let. 7/9/63  
attached.  
en*



S. T. "FIRMAL MARCH" - MALE LEAF/REGGULE INDENTITY AGREEMENT

Projected Costs (Schedule B) and Projected Income (Schedule A) for Vessel's Operating Year

Pro-rated to Fiscal Year Basis

T C YEAR 9/24/59	INDENTITY AGREEMENT		ADJUSTED COST	** DAILY COST	NO. OF DAYS	SUB-TOTAL	FISCAL YEAR	"A" MINUS "B" = PROJECTED EARNINGS	
	SCHEDULE B COST	* ADJUSTED INTEREST 1969 EIDS						SCHEDULE B COST	SCHEDULE A INCOME
TO:									
9/24/60	196,000	5,265	401,265		365	(Carriers)	7/31/60	(Carriers)	(Carriers)
9/24/61	196,000	7,183	403,183	1,104	110		7/31/61		
9/24/62	408,000	7,183	415,183	1,104	55	60,720	7/31/62	413,190	1,257,525
9/24/63	400,000	7,183	415,183	1,137	110	152,470	7/31/63	415,005	1,257,525
9/24/64	420,000	7,183	427,183	1,137	55	62,535	7/31/64	427,235	1,257,525
9/24/65	420,000	7,183	427,183	1,170	110	162,700	7/31/65	427,070	1,233,308 ****
9/24/66	412,000	5,588	417,588	1,170	55	64,350	7/31/66	417,740	1,230,183
9/24/67	412,000	4,016	416,016	1,153	55	63,425	7/31/67	416,030	1,230,180
9/24/68	444,000	2,944	446,944	1,154	110	126,940	7/31/68	446,110	1,230,183
9/24/69	444,000	896	444,896	1,224	55	67,320	7/31/69	444,900	1,230,128
9/24/70	444,000	896	444,896	1,218	110	127,500	7/31/70	444,900	1,206,963 ****
9/24/71	456,000	-	456,000	1,216	55	67,184	7/31/71	454,132	1,202,850
9/24/72	458,000	-	458,000	1,249	110	137,420	7/31/72	455,805	1,202,850
9/24/73	468,000	-	468,000	1,249	55	68,695	7/31/73	467,930	1,202,850
9/24/74	468,000	-	468,000	1,282	110	141,020	7/31/74	467,930	1,202,850

\* Schedule "B"  
Note (1)

\*\* Schedule "B"  
Note (2)

\*\*\* 1969 Bonus  
nature 9/1/69  
due to initial  
prepayment

\*\*\*\* Apportioned  
per Schedule "B"  
Note (2)

# SCHEDULE C

## Estimated Off-Hire Insurance Premiums During Entire Term of Time Charter

<u>Period</u>		<u>Yearly Premium</u>	<i>actual</i>
First Two Years	to 9/24/61	\$17,800	{ 16,868
Second Two Years	- 9/24/63	17,800	{ 16,868
Third Two Years	- 9/24/65	25,000	{ 25,515
Fourth Two Years	- 9/24/67	25,000	{ 22,931
Fifth Two Years	- 9/24/69	32,000	
Sixth Two Years	- 9/24/71	32,000	
Last Three Years	- 9/24/74	32,000	



AGREEMENT made as of the 20th day of *June*,  
1963.

B E T W E E N:

FEDERAL BULK CARRIERS, INC., a corporation organized under the laws of the State of New York and having its principal office at the City of New York in the said State (hereinafter sometimes called "Federal Bulk") and BESSEMER SECURITIES CORPORATION, a corporation organized under the laws of the State of Delaware and having its principal office at the said City of New York (hereinafter sometimes called "Bessemer")

hereinafter sometimes collectively called  
the "Vendors"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province.

hereinafter called "Maple Leaf"

OF THE SECOND PART

- and -

FEDERAL TANKERS LIMITED, a company incorporated under the laws of Canada and having its head office at the City of Halifax in the Province of Nova Scotia,

hereinafter called "Tankers"

OF THE THIRD PART

- and -

BESSBULK LIMITED, a company incorporated under the laws of the said Province of Ontario and having its head office at the said City of Toronto,

hereinafter called "Bessbulk"

OF THE FOURTH PART.

WHEREAS concurrently with the execution and delivery hereof the Vendors and Maple Leaf are executing and delivering an agreement of even date herewith (hereinafter called the "purchase agreement") providing for the sale by the Vendors and the purchase by Maple Leaf of shares and debentures of Bessbulk;

AND WHEREAS the parties to the purchase agreement are executing and delivering the same on condition that this agreement

be so concurrently executed and delivered;

WITNESSETH that in consideration of the foregoing and of their respective agreements hereinafter contained the parties hereto agree as follows:

1. In this agreement:

(a) "authorized investment" means any share, bond, debenture or other evidence of indebtedness which at the time of investment therein is an investment in which Section 63 of the Canadian and British Insurance Companies Act states that a company registered under Part III of such act may invest its funds or any portion thereof without having recourse for such purpose to the provisions of subsection 4 of such Section 63 (and for such purposes the provisions of subsection 7 of such section shall not apply), and in addition, but in the case of a common share only, which at the time of investment therein is listed in the approved list; and

(b) "approved list" means the list of common shares approved in writing by the Vendors and Maple Leaf concurrently with the execution and delivery of this agreement, as the same may from time to time be amended by the addition or deletion of common shares thereto or therefrom provided that such amendment be agreed upon in writing between the Vendors and Maple Leaf.

see document #5

2. As of the date hereof:

(a) the agreement between Bessbulk and Maple Leaf dated as of July 31, 1961 (but delivered by the said parties on April 12, 1962), relating to the revenues and costs in connection with the operations of S.T. Federal Monarch (hereinafter called the "vessel"); and

(b) the agreement between Tankers and Bessbulk dated



as of July 31, 1961 (but delivered by the said parties on April 12, 1962), relating to the supervision and direction of the operations of the vessel; are cancelled and terminated, without affecting any rights or liabilities heretofore accrued under either thereof.

3. Whenever from time to time during the term of the purchase agreement:

- (a) the Vendors shall jointly give notice (in the manner provided by the purchase agreement) to Maple Leaf instructing it to have Bessbulk:
  - (i) sell any investments then owned by it;  
and/or
  - (ii) purchase any authorized investments, either with funds then on hand or with funds to be received upon the sale of investments;

Maple Leaf shall proceed with all reasonable dispatch to obey such instructions to the extent that such compliance is reasonably possible, provided that Maple Leaf shall not be required to have Bessbulk make any such sale which, after giving effect to any concurrent purchases out of the proceeds thereof, would reduce to below \$1,000,000 the aggregate par value of authorized investments held by Bessbulk in the form of preferred shares, debentures or other evidences of indebtedness; or

- (b) Maple Leaf shall give notice (in the manner provided by the purchase agreement) to the Vendors advising them of Maple Leaf's intention to have Bessbulk make a distribution to Maple Leaf as permitted by paragraph 7 of the purchase agreement and designating an amount of cash which it will accordingly be necessary for Bessbulk to raise through the sale of investments,

the Vendors shall with all reasonable dispatch give to Maple Leaf the appropriate instructions by notice pursuant to subparagraph (a) of this paragraph 3; provided, however, that in the absence of such instructions from the Vendors within 15 days after the giving of such notice by Maple Leaf, the latter shall have the right to cause the sale of such of the investments of Bessbulk as in the sole discretion of Maple Leaf it shall determine and in such amount as shall be necessary in order to realize the amount of cash referred to in such notice;

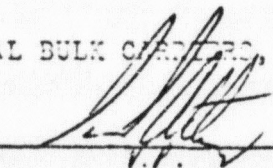
and during the term of the purchase agreement and notwithstanding anything therein contained Maple Leaf shall have no right or responsibility as against the Vendors in connection with the investments of Bessbulk except the rights and responsibilities hereinbefore in this paragraph 3 set out, and such investments shall, for all purposes of the purchase agreement and otherwise, be purchased and sold from time to time solely in the discretion of and, as between the Vendors on the one hand and Maple Leaf on the other hand, at the risk and upon the responsibility of the Vendors; provided, however, that nothing herein contained shall constitute the Vendors as guarantors of the market value from time to time of the investments of Bessbulk.

4. This agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall be and constitute but one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

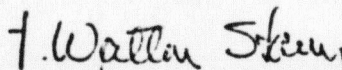
FEDERAL BULK CREDIT CO., INC.

By:  
6P

  
L. E. Miller  
ASST. SECY.

BESSEMER SECURITIES CORPORATION

By:

  
T. Wallin Skerry  
VICE PRESIDENT





IN THE MATTER OF an agreement made as of June 20, 1963 among Federal Bulk Carriers, Inc., Bessemer Securities Corporation, Maple Leaf Mills Limited, Federal Tankers Limited and Bessbulk Limited, relating, among other things, to investments by Bessbulk Limited.

For the purposes of the above-mentioned agreement and particularly subparagraph (b) of paragraph 1 thereof, the undersigned hereby approve common shares of the following corporations, with the intent that the same shall be the "approved list" within the meaning of the said subparagraph (b):

BANKS FINANCE

Bank of Montreal  
Canadian Imperial Bank of Commerce  
Royal Bank of Canada  
Toronto Dominion Bank  
Investors Syndicate of Canada  
Industrial Acceptance Corp. Ltd.  
Traders Finance Corp. Ltd. "A" and "B"

INDUSTRIALS

Abitibi Power & Paper Co. Ltd.  
Aluminium, Ltd.  
Asbestos Corp. Ltd.  
Bell Telephone of Canada Ltd.  
British American Oil Co. Ltd.  
Calgary & Edmonton Corp. Ltd.  
Canada Cement Co. Ltd.  
Canada Malting Co. Ltd.  
Canada Packers Ltd. "B"  
Canadian Breweries Ltd.  
~~Canadian Oil Co. Ltd.~~ Shell Oil Company of Canada Limited  
Canadian Pacific Railway Co.  
Consumers Gas Co.  
Distillers Corporation-Seagrams Ltd.  
Dominion Foundries & Steel Ltd.  
Dominion Glass Co. Ltd.  
Dominion Stores Ltd.  
Dominion Tar & Chemical Co. Ltd.  
Dupont of Canada Ltd.  
Ford Motor Company of Canada Ltd.  
~~Gatineau Power Company~~  
Great Lakes Paper Co. Ltd.  
Hudson's Bay Company  
Imperial Oil Limited  
Imperial Tobacco Co. of Canada Ltd.  
International Nickel Co. of Can. Ltd.  
Interprovincial Pipe Line Co.  
Loblaw Groceries Co. Ltd.  
Loblaw Groceries Ltd.  
MacMillan, Bloedel and Powell River Ltd.  
Molson's Brewery Ltd. "A" and "B"  
Moore Corporation Ltd.  
Page-Hersey Tubes Ltd.  
St. Lawrence Corp. Ltd.  
Salada Foods Ltd.  
~~Shawinigan Water & Power Co.~~  
Simpsons Limited  
Steel Co. of Canada Ltd.  
Texaco Canada Ltd.  
H. Walker-Gooderham & Worts Ltd.



George Weston Ltd. "B"  
Zeller's Limited  
Cons. Mining & Smelting Co. of Canada Ltd.  
Dome Mines Ltd.  
Falconbridge Nickel Mines Ltd.  
Noranda Mines Ltd.

DATED June 20, 1963.

FEDERAL BULK CARRIERS, INC.

By:

*[Signature]* V.P.  
*R. E. Diller*  
Asst. Secy.

BESSEMER SECURITIES CORPORATION

By:

*J. Watkin Starn*  
VICE-PRESIDENT  
*Richard H. Murrell*  
SECRETARY

MAPLE LEAF MILLS LIMITED

By:

*[Signature]*  
*[Signature]*

36  
34  
+15C-  
300Bessbulk Agreement

AGREEMENT made as of the 18th day of November, 1965.

B E T W E E N:

FEDERAL BULK CARRIERS, INC., a corporation organized under the laws of the State of New York and having its principal office at the City of New York in the said State (hereinafter sometimes called "Federal Bulk") and BESSEMER SECURITIES CORPORATION, a corporation organized under the laws of the State of Delaware and having its principal office at the said City of New York (hereinafter sometimes called "Bessemer")

hereinafter sometimes collectively called  
the "Vendors"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province,

hereinafter called "Maple Leaf"

OF THE SECOND PART

WITNESSETH that in consideration of their respective agreements hereinafter set out the parties hereto agree each with the others as follows:

1. In and for the purposes of this agreement:
  - (a) "purchase agreement" means the agreement among the parties hereto dated as of June 20, 1963, providing for the sale by the Vendors and the purchase by Maple Leaf of the outstanding shares and Income Debentures of Bessbulk Limited;

EXH. NO.	6115-73
EXH.	43-00

~~43-00~~ 43-00



- (b) all other terms used in this agreement which are given meaning by definition or designation in the purchase agreement have the respective meanings therein given, unless the context of this agreement otherwise requires;
- (c) "terminated" in relation to any charter or agreement means that the same is terminated and cancelled and that none of the parties thereto shall have any obligation or liability thereunder by reason of any matter or thing arising thereunder after the date when the same is so terminated;
- (d) "closing" means the completion of a series of substantially concurrent transactions whereby, among other things:
  - (i) the existing mortgage of the vessel is discharged and the vessel freed and released from the security thereby constituted;
  - (ii) the time charter and sub-charter are terminated;
  - (iii) Maple Leaf sells and delivers the vessel to a purchaser which is not a company controlled by Maple Leaf, and Maple Leaf and Carriers assign to the purchaser their right, title and interest in and to the first charter; and .

- (iv) the first charter is terminated;
- (e) "proceeds of disposition" means the proceeds of disposition of the vessel upon its sale as referred to in clause (iii) of subparagraph (d) of this paragraph 1, determined in accordance with the provisions of and for the purposes of the Canadian Vessel Construction Assistance Act;
- (f) "deposit" means the deposit, under subparagraph (ii) of paragraph (a) of subsection (1) of section 4 of the Canadian Vessel Construction Assistance Act, on terms satisfactory to the Canadian Maritime Commission, of funds in the amount necessary in order that Maple Leaf shall obtain the certificate therein referred to of the Canadian Maritime Commission in respect of the said sale of the vessel;
- (g) "Maple Leaf contribution" to the deposit means (if the proceeds of disposition exceed \$5,300,000) the portion of the funds comprising the deposit equal in amount to the excess of:
  - (i) the amount referred to in subparagraph (f) of this paragraph 1; over
  - (ii) the amount that would be required to be deposited under the said subparagraph (f) if the proceeds of disposition were \$5,300,000; and
- (h) "transfer adjustment" means \$530,000 or 10% of the proceeds of disposition, whichever is lesser.



2. Provided that the closing takes place on or before November 30, 1965:

- (a) paragraph 11 of the purchase agreement shall not apply to the sale of the vessel which is one of the transactions included in the closing as referred to in subparagraph (d) of paragraph 1 hereof;
- (b) for the purposes of the purchase agreement the charter period shall terminate at the time of the delivery of the vessel giving effect to such sale;
- (c) the basic purchase price under the purchase agreement shall accordingly equal the adjusted purchase price thereunder;
- (d) concurrently with the closing Maple Leaf shall pay \$1,280,930.00 to the Vendors on account of the basic purchase price;
- (e) forthwith after the receipt by Maple Leaf and the Vendors of a final and binding certification by the auditors of the basic purchase price, Maple Leaf shall pay to the Vendors the amount by which the aggregate of the basic purchase price and the transfer adjustment shall exceed the payment under subparagraph (d) of this paragraph 2, or the Vendors shall reimburse to Maple Leaf the amount by which the payment under the said subparagraph (d)

shall exceed such aggregate; and

- (f) upon the making of the payment or reimbursement provided by subparagraph (e) of this paragraph 2 the purchase agreement shall be terminated by virtue of this agreement and without the necessity for any further act or formality on the part of any of the parties hereto.

3. Provided that the closing takes place on or before November 30 , 1965, then with all possible dispatch after the closing and in any event before December 15 , 1965:

- (a) if the proceeds of disposition do not exceed \$5,300,000, the Vendors shall at their expense make the deposit for the benefit of Maple Leaf;
- (b) if the proceeds of disposition exceed \$5,300,000, the Vendors and Maple Leaf shall make the deposit for the benefit of Maple Leaf, to which Maple Leaf shall at its expense contribute the Maple Leaf contribution thereto and the Vendors shall at their expense contribute the balance.

4. From and after the making of the deposit the Vendors shall be entitled from time to time to require Maple Leaf to sell and transfer the same or any part or parts thereof (excluding, however, the Maple Leaf contribution thereto) to such purchaser or purchasers and for such price or prices as the Vendors shall determine, provided that each such purchaser shall effectively bind itself in favour of Maple Leaf to ensure that any capital cost or conversion cost



incurred to justify the payment out of any part of the deposit shall be incurred and expended under conditions satisfactory to the Treasurer of Ontario and the Minister of Revenue of Quebec for the respective purposes of section 33 of The Corporations Tax Act of Ontario and the comparable Regulation under the Corporation Tax Act of Quebec; and the Vendors shall be entitled to receive and retain the full amount of such price or prices to the exclusion of Maple Leaf, which shall execute and deliver such writings and do such things as shall be necessary or desirable in order to co-operate with the Vendors in carrying out and giving effect to each such sale.

5. This agreement shall be null and void and shall have no force and effect unless the closing takes place on or before November 30, 1965.

6. This agreement shall be governed by and construed according to the laws of the Province of Ontario, and references herein to dollar amounts are in terms of lawful money of Canada.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

FEDERAL BULK CARRIERS, INC.

By:

*hadislas paky*

PRESIDENT

*LE Mill*

ASST. SECY

BESSEMER SECURITIES CORPORATION

By:

John W. Campbell  
President

Richard H. Murrell  
Assistant Secretary

MAPLE LEAF MILLS LIMITED

By:

Edna M. Campbell

H. J. Campbell



Amended Bassbulk Agreement

736-221  
Amended

AGREEMENT made the 13th day of December, 1965.

B E T W E E N:

FEDERAL BULK CARRIERS, INC., a corporation organized under the laws of the State of New York and having its principal office at the City of New York in the said State and  
DESENER SECURITIES CORPORATION, a corporation organized under the laws of the State of Delaware and having its principal office at the said City of New York

hereinafter collectively called the "Vendors"

OF THE FIRST PART

- and -

MAPLE LEAF MILLS LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto in the said Province,

hereinafter called "Maple Leaf"

OF THE SECOND PART

WHEREAS by agreement (hereinafter called the "Bassbulk Agreement") made between the parties hereto as of November 18, 1965, it was agreed, inter alia, that from and after the making of the deposit referred to in the Bassbulk Agreement the Vendors would be entitled from time to time to require Maple Leaf to sell and transfer the same or any part or parts thereof (excluding, however, the Maple Leaf contribution thereto) to such purchaser or purchasers and for such price or prices as the

BEST COPY AVAILABLE

Vendors should determine, provided that each such purchaser should effectively bind itself to ensure that any capital cost or conversion cost incurred to justify the payment out of any part of the deposit would be incurred and expended under conditions satisfactory to the "Treasurer of Ontario and the Minister of Revenue of Quebec for the respective purposes of Section 33 of The Corporations Tax Act of Ontario and the comparable regulation under the Corporation Tax Act of Quebec;

AND WHEREAS any term used in this agreement which is defined in the Bessbulk Agreement shall, for the purposes of this agreement, have the meaning ascribed thereto in the Bessbulk Agreement;

AND WHEREAS the Vendors have required Maple Leaf to sell and transfer parts of the deposit to certain purchasers, and such purchasers are unwilling to bind themselves in favour of Maple Leaf as required by the Bessbulk Agreement;

AND WHEREAS the Vendors have requested Maple Leaf to agree to an amendment of the Bessbulk Agreement as hereinafter set out and Maple Leaf has agreed to such amendment provided the Vendors enter into the guarantee hereinafter set out;



WITNESSETH THAT in consideration of the premises and of their respective covenants and agreements hereinafter set out the parties hereto covenant and agree each with the others as follows:

1. The Bessbulk Agreement is hereby amended by deleting the portion of paragraph four thereof commencing with the word "provided" in the third last line of page five thereof and ending with the word "Quebec" in the sixth line of page six thereof.
2. The Vendors jointly and severally guarantee to and with Maple Leaf that each of the purchasers to whom the Vendors have heretofore required or may hereafter require Maple Leaf to sell and transfer the deposit or any part or parts thereof will incur and expend any capital cost or conversion cost incurred to justify the payment out of any part of the deposit under conditions satisfactory to the Treasurer of Ontario and the Minister of Revenue of Quebec for the respective purposes of Section 33 of The Corporations Tax Act of Ontario and the comparable regulation under the Corporation Tax Act of Quebec.

3. This agreement shall be governed by and construed according to the laws of the Province of Ontario.
4. This agreement shall endure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

FEDERAL BULK CARRIERS, INC.

By: Radu Paraschiv

BESSEMER SECURITIES CORPORATION

By: John H. Simpson

PRESIDENT

Richard W. Wilkins  
ASST. SEC.

MAPLE LEAF MILLS LIMITED

By: W. W. Wilkins

PRESIDENT

V. PRESIDENT AND SECRETARY



*Termination of  
Agreement  
Sale-42C-2*

AGREEMENT made the 14<sup>th</sup> day of November, 1965.

B E T W E E N:

MAPLE LEAF MILLS LIMITED, a company incorporated  
under the laws of the Province of Ontario,

hereinafter called "Maple Leaf"

OF THE FIRST PART

FEDERAL TANKERS LIMITED, a company incorporated  
under the laws of Canada,

hereinafter called "Tankers"

OF THE SECOND PART

FEDERAL BULK CARRIERS, INC., a corporation organized  
under the laws of the State of New York,

hereinafter called "Federal Bulk"

OF THE THIRD PART

BESSEMER SECURITIES CORPORATION, a corporation  
organized under the laws of the State of Delaware,

hereinafter called "Bessemer"

OF THE FOURTH PART

- and -

BESSBULK LIMITED, a company incorporated under  
the laws of the Province of Ontario,

hereinafter called "Bessbulk"

OF THE FIFTH PART.

WITNESSETH that in consideration of their respective  
agreements hereinafter set out the parties hereto hereby agree,  
each with the others, as follows:

1. Each of:

- (a) the agreement dated June 20, 1963 made between Bulk, Bessemer, Maple Leaf, Tankers and Bessbulk relating to, among other things, the investment of the funds of Bessbulk; and
- (b) the agreement dated June 1, 1964 made between Tankers and Bulk constituting Bulk as the agent of Tankers for the management and operation of the S.T. Federal Monarch;

be and is hereby terminated on and as of the date of this agreement.

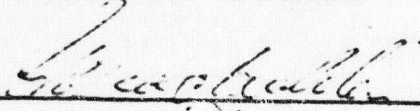
2. None of the parties hereto shall have any further liability or obligation under or arising out of either of the said agreements.

3. This agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

MAPLE LEAF MILLS LIMITED

By:

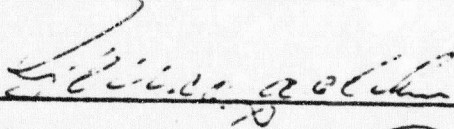
 PRESIDENT

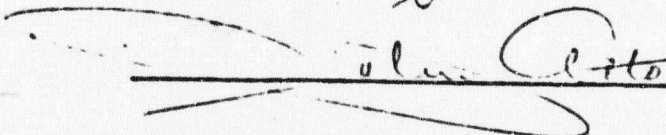


ASSISTANT SECRETARY-TREASURER

FEDERAL TANKERS LIMITED

By:

 VICE-PRESIDENT

 SECRETARY



FEDERAL BULK CARRIERS, INC.

By:

Radilapath  
PRESIDENT

LE Miller  
ASST. SECY.

BESSEMER SECURITIES CORPORATION

By:

John M. Murphy  
President

Richard W. Morris  
Assistant Secretary

BESSEBULK LIMITED

By:

W. J. Hall  
W. J. Hall

DIRECTOR

MAPLE LEAF MILLS LIMITED

SCHEDULE

RE S. T. FEDERAL MORTGAGE AND TRUST COMPANY LIMITED

CALCULATION OF NET REVENUE DECREASE AND CHARTER PERIOD DEDUCTION

JUNE 25, 1961 TO NOVEMBER 19, 1965

	June 25, 1961 to July 31, 1962	July 31, 1963	Year ended July 31, 1964	July 31, 1965	August 1, 1965 to November 19, 1965	Total
Projected net revenue - U.S. dollars	\$845,040	\$841,015	\$837,200	\$806,258	\$240,169 (note)	
Actual net revenue - U.S. dollars	<u>691,047</u>	<u>706,670</u>	<u>741,705</u>	<u>606,267</u>	<u>57,811</u>	
Net revenue decrease - U.S. dollars	<u>\$153,993</u>	<u>\$134,345</u>	<u>\$95,495</u>	<u>\$199,991</u>	<u>182,358</u>	<u>\$1,115,182</u>
Translation to Canadian dollars, \$1 U.S. = \$1.08 Can.	\$206,932	\$145,100	\$103,255	\$215,802	\$195,302	\$1,001,379
Balance of Esso-Bulk Limited available for distribution to Maple Leaf, and received by Maple Leaf	<u>36,050</u>	<u>52,026</u>	<u>60,034</u>	<u>63,717</u>		<u>211,827</u>
Unrecovered balance of net revenue decrease	<u>\$170,874</u>	<u>\$93,074</u>	<u>\$43,461</u>	<u>\$136,175</u>	<u>\$195,302</u>	<u>\$601,846</u>
Cumulative unrecovered balance of net revenue decrease representing "Charter period deduction"	<u>\$170,874</u>	<u>\$187,148</u>	<u>\$230,609</u>	<u>\$366,784</u>	<u>\$562,086</u>	

Note: Projected net revenue for year  
ended July 31, 1966 -  
Revenue  
Operating costs

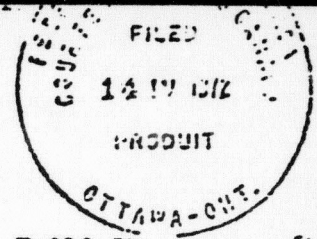
\$1,230,100  
432,720  
\$ 797,380

Projected net revenue for period from  
August 1, 1965 to date of sale,  
November 19, 1965 at 11:30 a.m.

215-73  
47-RR-4555 10-11



In The Federal Court of Canada  
Trial Division



T-819-71

35

BETWEEN

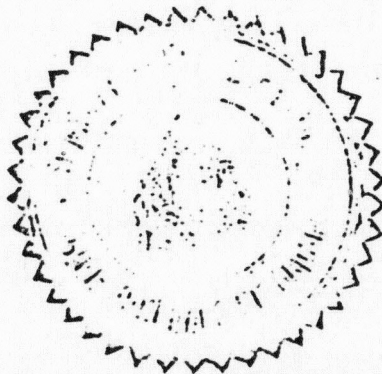
MAPLE LEAF MILLS LIMITED,

Appellant,

- and -

THE MINISTER OF NATIONAL REVENUE,

Respondent.



J U D G M E N T

GIBSON J.

The appeal is dismissed with costs.

J.F.C.C.

O t t a w a .

April 14, 1972.

I HEREBY CERTIFY that the above document is a  
true copy of the original filed of record in the Registry

of The Federal Court of Canada this 14 day

of April A.D. 1972.

Dated this 14 day of April, 1972.

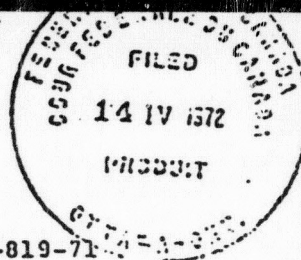
CLERK OF PROCESS

DOCT NO. <u>6/145-73</u>
EXH. <u>45-55</u>

4555

In The Federal Court of Canada  
Trial Division

T-819-71



BETWEEN

MAPLE LEAF MILLS LIMITED,

Appellant,

- and -

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

GIBSON J.

This is an appeal from a reassessment for income tax of the appellant for the taxation year 1965 in respect to an item in the amount of \$1,201,079, which has been called "the aggregate net revenue decreases" from August 1, 1961 to November 19, 1965, arising out of the operation of the ship *S.T. Federal Monarch*, which amount the respondent says, "has been properly taken into account in computing the taxpayer's income in accordance with the provisions of Sections 3 and 4 of the (*Income Tax*) Act".

The ship, the *S.T. Federal Monarch*, a 40,000 ton deadweight single screw steam turbine oil tank vessel was built by Davie Shipbuilding Limited at Lauzon, Quebec, and delivered in 1959.

A number of parties entered into contracts in relation to this ship, some of whom, in addition to the appellant, were:

Federal Bulk - being Federal Bulk Carriers Incorporated, a corporation incorporated under the laws of the State of New York, one of the States of the United States of America;  
Bessemer - being Bessemer Securities Corporation, a corporation incorporated under the laws of



the State of Delaware, one of the States of  
the United States of America;

Tankers - being Federal Tankers Limited, a company  
incorporated under the laws of Canada;

Carriers - being Federal Petroleum Carriers  
Limited, a company incorporated under the  
laws of Canada;

Bessbulk - being Bessbulk Limited, a company  
incorporated under the laws of the Province of  
Ontario;

Imperial Oil - being Imperial Oil Limited, a  
company incorporated under the laws of Canada.

The beneficial owners of the ship, after it was  
built in 1959, were the said two United States corporations,  
namely, Federal Bulk as to 60% and Bessemer as to 40%, which  
corporations respectively in like percentages owned the out-  
standing shares of Tankers, which in turn owned all the  
outstanding shares of Carriers, which in turn owned the ship.

After the ship was built, it entered service under a  
15 year charter to Imperial Oil.

In connection with the financing of the cost of  
construction of the ship, a number of bareboat and time charters  
were entered into and pledged, the details of which are  
not relevant to the determination of the issues on this  
appeal.

The appellant as of July 31, 1961, purchased from  
Federal Bulk and Bessemer for the sum of \$2,300,000 all of  
the issued shares of Tankers and all the subordinated notes  
of Tankers.

As of July 31, 1961, also, the appellant purchased the  
ship from Carriers for the sum of \$11,236,032 payable:

- (1) by the assumption of all of Carriers' obligations  
of a first mortgage bond for \$7,235,634;
- (2) by the assumption of 6% subordinated notes for  
\$3,961,620; and
- (3) by the cancellation of the balance of \$38,628.

At the time of these two transactions, Federal Bulk and Bessemer also agreed and did incorporate Bessbulk and transferred to it the sum of \$1,943,550 (which Bessbulk was to invest in certain income producing assets) and also caused Bessbulk to enter into an agreement with the appellant.

The 1961 agreement between Bessbulk and the appellant provided that if the operation of the ship did not result in a certain level of earnings being attained, then Bessbulk would become indebted to an amount equal to the deficiency in earnings, and contrarywise, such indebtedness would be reduced by the amount, if any, which the earnings from the ship exceeded such guaranteed level of earnings in subsequent years.

It also provided that the only portion of the indebtedness which was to be paid to the appellant by Bessbulk in any year was an amount equal to the net earnings of Bessbulk in such year, with the payment of the balance, if any, of the indebtedness being deferred for payment until either the termination of the charters or the sale of the ship, whichever occurred first. In the meantime, Bessbulk held the funds.

The 1961 agreement between Bessbulk and the appellant was restructured by an agreement dated June 20, 1963.

In the 1963 agreement, the appellant agreed to purchase from Federal Bulk and Bessemer all the outstanding shares and debentures of Bessbulk for a price equivalent to the net worth of Bessbulk on the termination of the charters or the sale of the ship, whichever occurred first, subject to an abatement representing what is called "the aggregate net revenue decreases" above referred to.

The deficiencies in the ship's net cash revenues as against its projected net cash projected revenues in the agreement for the following fiscal years of the appellant's were as follows:



1962	\$ 206,932
1963	362,108
1964	307,255
1965	129,482
1966	<u>195,302</u>
	\$ 1,201,079

The appellant received from Bessbulk the following sums in the fiscal years of the appellant hereinafter listed:

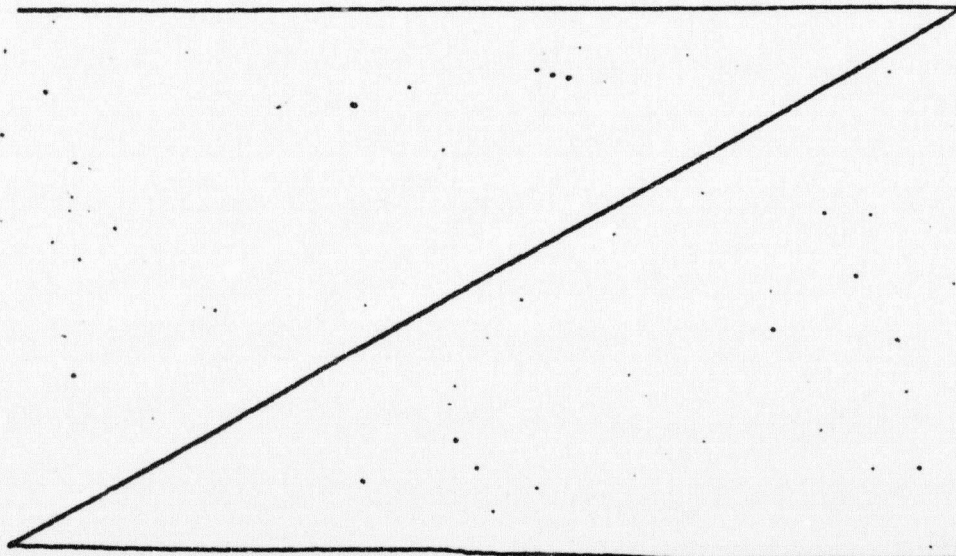
1963	\$ 36,058
1964	55,826
1965	60,834.

On November 19, 1965, the ship was sold by the appellant to Oswego Unity Corporation.

After that, as the 1963 agreement contemplated, the auditors issued their certificate which is dated December 5, 1966 as to the net revenue decreases from the operation of the ship, and the basic purchase price of the shares and debentures of Bessbulk in the following terms:

- (1) The net revenue decreases (as defined) to November 19, 1965 aggregated U.S. \$1,114,189, Cdn. \$1,201,079 (see Schedule 1).
- (2) The basic purchase price of the shares and income debentures of "Bessbulk" is Cdn. \$1,194,309 calculated as follows -

Net worth of Bessbulk Limited as at November 19, 1965	\$2,178,953
Less "Charter period deduction" as per schedule 1	<u>984,644</u>
Basic purchase price	\$1,194,309



So much for the facts.

In reviewing the whole of the evidence and especially the terms of the agreement dated June 20, 1963 between Federal Bulk and Bessemer and the appellant, Maple Leaf, respecting the purchase price of the shares and debentures of Bessbulk and the certificate of the auditors issued pursuant to the terms of that agreement, the amount found by the auditors as to "the basic purchase price of the shares and income debentures of Bessbulk", namely \$1,194,309, does not represent the fair market value of said shares and debentures of Bessbulk. Instead, the fair market value was \$1,201,079 more, which also was the amount due to the appellant in respect of the earnings deficiencies of the ship (calculated pursuant to the terms of the said agreement) for the period from 1962 to 1966 of the fiscal years of the appellant.

The issue on this appeal is whether or not the amount categorized in said Schedule 1 above referred to as "net revenue decrease" (in Canadian dollars), in the amount of \$1,201,079 should be brought into account in computing the appellant's income for the taxation year 1966, either firstly, as representing the difference in the purchase price of the shares and debentures of Bessbulk between their fair market value and the amount the appellant paid for them, or secondly, as income in another way from the business of operating the ship *S.T. Federal Monarch*; or whether, on the contrary, the said amount should not be brought into account in computing the appellant's income for the taxation year 1966 because it should be categorized as the abatement of the tentative purchase price on capital account of the said shares and debentures of Bessbulk, which purchase price could not be and was not definitely and finally determined until after November 19, 1965 when the ship was sold (being one of the two times provided for in the 1963 agreement for the calculation and determination of the said purchase price of said shares and debentures of Bessbulk).

It was the submission of the appellant that the essence of these transactions was that Bessemer and Federal



Bulk did not receive the purchase price at the time they transferred the shares and debentures of Bessbulk to the appellant, but instead only after the sale of the ship on November 19, 1965, when, only, pursuant to the agreement of 1963, it was possible to determine the "basic purchase price" of the same; and that although economic factors in determining such "basic purchase price" were taken into account, namely, net revenue decreases or increases, in respect to the operation of the ship, nevertheless, the agreement of 1963 makes such determination of the "basic purchase price" a matter on capital account and not on income.

The respondent submitted that from all these arrangements it should be inferred that it was the intention on the part of the appellant that the abatement of the purchase price of these shares and debentures received by it should be on income account; and that the restructuring of the 1961 agreement of 1963 to accommodate Federal Bulk and Bessemer did not change the character of the sum in issue in this appeal, such representing the guarantee of income in the operation of the ship.

In my view, both the 1961 and 1963 agreements in essence, guaranteed a certain revenue from the operation of the ship. The 1963 agreement accomplished this purpose by way of the said mechanics to determine the purchase price of the shares and debentures of Bessbulk.

By reason thereof, the appellant obtained a benefit of \$1,201,079 which may be categorized either as a receipt of income in another way from the business of operating the ship or as a benefit received as a result of being able to acquire the shares and debentures of Bessbulk at less by the said amount than their fair market value (which benefit the appellant had a right to receive only if, and did receive only because there was a deficiency in earnings, as defined, arising out of the operations of the ship as an income producing asset?).

Under the 1963 agreement, this receipt or benefit was determined and payable in November 1965, when the ship was

and was obtained by the appellant in its 1966 taxation year.  
The amount of this receipt or benefit must therefore be  
included in the income of the appellant in computing its  
profit for the 1966 taxation year.

The appeal is dismissed with costs.

Hugh F. Gibson  
J.F.C.C. J.C.F.C.

O t t a w a.

April 14, 1972.

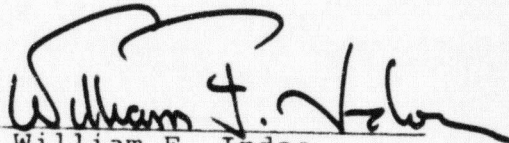


CERTIFICATE OF SERVICE

It is hereby certified that the service of the Appendix has been made on counsel for Respondent-Appellee on this 11th day of January, 1977 by mailing 4 copies thereof in an envelope, with postage prepaid, properly addressed to him as follows:

Daniel F. Ross, Esq.  
United States Department of Justice  
Washington, D.C. 20530

Att: MCB:GEA:DFRoss:jmg  
5-13512

  
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William F. Indoe  
Attorney